AMERICA BUILDS: CLEAN WATER ACT PERMITTING AND PROJECT DELIVERY

(119–6)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

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FEBRUARY 7, 2025

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Subcommittee Hearing on "*America Builds: Clean Water Act Permitting and Project Delivery*"

I. PURPOSE

The Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure will meet on Tuesday, February 11, 2025, at 10:00 a.m. ET in 2167 Rayburn House Office Building to receive testimony at a hearing entitled, "*America Builds: Clean Water Act Permitting and Project Delivery*." The hearing will examine how Congress can ensure that the Clean Water Act (CWA) balances the goals of protecting water quality and ensuring project completion, reducing supply chain challenges, and promoting commerce. At the hearing, Members will receive testimony from witnesses representing the State of Oklahoma Department of Environmental Quality, the New Jersey Department of Environmental Protection, National Association of Manufacturers, and National Rural Electric Cooperative Association.

II. BACKGROUND: OVERVIEW OF THE CLEAN WATER ACT

Congress enacted the 1972 amendments to the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), with the goal to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."[1] The CWA provides a major Federal-state program as the principal law governing the quality of the Nation's surface waters, including certain wetlands.[2] The Environmental Protection Agency (EPA) is the primary Federal agency tasked with carrying out the CWA, while the United States Army Corps of Engineers (Corps) is also tasked with certain responsibilities. To achieve the objectives of the law, the CWA established two goals: (1) eliminate pollutant discharge into navigable waters by 1985, and (2) where possible, ensure water quality that is "fishable" and "swimmable" by 1983.[3]

The CWA consists of two major parts: (1) the authorization of financial assistance for construction of municipal wastewater treatment plants, and (2) the regulatory requirements that apply to those who discharge into navigable waters, including in-

[1] CWA, Pub. L. No. 92–500, 86 Stat. 816.
[2] H. COMM. ON TRANSP. AND INFRASTRUCTURE, JURISDICTION AND ACTIVITIES OF THE SUBCOMM. ON WATER RESOURCES AND ENVIRONMENT, 119TH CONG., (2023) (on file with Comm.).
[3] LAURA GATZ, CONG. RSCH. SERV. (RL30030), CLEAN WATER ACT: A SUMMARY OF THE LAW, (Updated Oct. 18, 2016), *available at* https://www.crs.gov/Reports/RL30030 [hereinafter CRS REPORT RL30030].

dustrial and municipal actors.[4] Planning, financial, and technical assistance for various regions and issues, tribal and state water quality programs, and oil spill prevention and planning programs are also addressed.[5]

The regulatory requirements in the CWA are found primarily in Titles III and IV of the law. Title III establishes the authority for EPA to develop the technological and water quality-based effluent limitation guidelines (ELGs) and requirements for points source dischargers to adhere to.[6] Whereas Title III focuses largely on the creation of water quality guidelines and limitations, Title IV primarily deals with application of the regulatory program, informed by the guidelines created pursuant to Title III, through which dischargers must receive permits or certifications.[7]

III. "WATERS OF THE UNITED STATES"

The CWA applies to "navigable waters," which is defined in the CWA as the "waters of the United States, including the territorial seas."[8] However, the statute does not further define the term "waters of the United States" (WOTUS). As such, the EPA and the Corps, which both play roles in clean water permitting, have attempted to define which waters are subject to Federal regulation under the CWA, through several sets of rules interpreting the Agencies' jurisdiction over WOTUS.[9] For example, the prior three Administrations each published regulatory changes to the definition of WOTUS in the Federal Register.[10]

Additionally, since passage of the CWA, there has been a substantial amount of litigation in the Federal courts on issues relating to the scope of CWA jurisdiction, including Supreme Court cases.[11] In May 2023, the Supreme Court ruled generally on the scope of WOTUS under the CWA in *Sackett v. EPA* (*Sackett*).[12]

The Court's ruling in *Sackett* narrows the scope of jurisdiction under the CWA as compared to both its longstanding regulatory implementation and the interpretation adopted by lower courts after the 2006 case of *Rapanos v. United States*.[13] While the extent of the change will depend on how the Corps and EPA implement various aspects of the decision, the *Sackett* majority's exclusion of wetlands that are separated from covered waters by natural or artificial barriers means that fewer wetlands will be covered than under any regulatory framework developed by the Corps or EPA since the 1970s.[14] The Court's ruling could also affect regulation of waters at the state level.[15]

During the period from 2001 up to the *Sackett* decision, all four Presidential Administrations adopted different approaches to implementation of CWA jurisdiction, in part, reflecting competing legal interpretations of prior decisions. The most recent of these efforts, undertaken by the Biden Administration and finalized in December of 2022, authorized CWA jurisdiction under either test established by the *Rapanos* decision—the "relatively permanent" or the "significant nexus" tests.[16] However, the *Sackett* decision specifically rejected the significant nexus test as a basis of asserting CWA jurisdiction, prompting EPA and the Corps to issue a conforming rule, on August 29, 2023, titled "Revised Definition of 'Waters of the United States'; Conforming," amending the December 2022 rule post-*Sackett*.[17]

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[4] *Id.*
[5] *Id.*
[6] CRS REPORT RL30030, *supra* note 3; *see also* CWA, *supra* note 1 at §§ 301–320.
[7] CRS REPORT RL30030, *supra* note 3; *see also* CWA, *supra* note 1 at §§ 401, 402, 404.
[8] CWA, *supra* note 1 at § 502(7).
[9] *See e.g.* Clean Water Rule: Definition of "Waters of the United States," Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015); The Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22,250 (Apr. 21, 2020); Revised definition of "Waters of the United States" Final Rule, 88 Fed Reg. 3004 (Jan. 18, 2023).
[10] *Id.*
[11] *See e.g. United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985); *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001); *Rapanos v. United States*, 547 U.S. 715 (2006).
[12] *Sackett v. EPA*, 598 U.S. 651 (2023) [hereinafter *Sackett*].
[13] KATE R. BOWERS, CONG. RSCH. SERV. LEGAL SIDEBAR (LSB10981), *Supreme Court Narrows Federal Jurisdiction Under Clean Water Act*, at 1 (June 21, 2023), *available at* https://www.crs.gov/Reports/LSB10981 [hereinafter LSB10981].
[14] *Id.*
[15] *Id.*
[16] Press Release, EPA, *EPA and Army Finalize Rule Establishing Definition of WOTUS and Restoring Fundamental Water Protections*, (Dec. 30, 2022), *available at* https://www.epa.gov/newsreleases/epa-and-army-finalize-rule-establishing-definition-wotus-and-restoring-fundamental.
[17] LSB10981, *supra* note 13; *see also*, Revised Definition of "Waters of the United States"; Conforming, 88 Fed. Reg. 61,964 (Sept. 8, 2023).

Although the Biden Administration's original (2022) and conforming (2023) rules, as well as other prior regulations were not litigated in Federal courts, the majority opinion in *Sackett* has changed key jurisdictional interpretations reflected in the Biden Administration's original rule.[18] Currently, the conforming rule is in effect in 23 states, the District of Columbia, and United States territories.[19] In the other 27 states, EPA and the Corps are regulating WOTUS consistent with the pre-2015 regulatory regime.[20]

Some states and stakeholders have raised concerns with the pace of implementation of the conforming WOTUS rule, and whether EPA and the Corps are complying with *Sackett*'s ruling.[21] Other states and stakeholders have expressed dissatisfaction with the *Sackett* ruling and called for states and the Executive Branch to evaluate other authorities to address the effects of *Sackett*.[22] Additional stakeholders have recognized that Congress could intervene to further speak to the scope of waters addressed by the CWA.[23]

IV. SECTION 401: WATER QUALITY CERTIFICATION

Section 401 of the CWA requires that an applicant for a Federal license or permit for any activity that may result in a discharge covered by the CWA provide the Federal licensing or permitting agency with a certification.[24] Such a certification is issued by the state or tribe (or EPA, in the case of tribal lands where a tribe has not been granted treatment as a state, as well as on Federal lands with exclusive Federal jurisdiction) that would be affected by the discharge.[25] Under section 401, the certifying authority may grant, grant with conditions, deny, or waive certification of proposed Federal licenses or permits.[26] Activities that commonly require a certification under section 401 of the CWA include hydropower projects that require licenses from the Federal Energy Regulatory Commission (FERC), industrial and municipal point sources requiring permits under section 402 of the CWA, and projects requiring dredge and fill permits under section 404 of the CWA or sections 9 and 10 of the Rivers and Harbors Act.[27]

On April 10, 2019, President Trump signed Executive Order 13686, directing the EPA to review its section 401 guidance and regulations.[28] Prior to that time, regulations promulgated in 1971 and interim guidance published in 2010 were in effect.[29] Later in 2019, the Trump Administration issued updated guidance, primarily concerning statutory and regulatory timelines for review, appropriate scope for section 401 certification, and information the certifying authority may consider in its certification review.[30] In 2020, the Trump Administration published a final rule, rescinding the 2019 guidance, while addressing many of these concerns.[31]

Similarly, on January 20, 2021, President Biden signed Executive Order 13990, directing a review of regulations promulgated during the first Trump Administra-

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[18] *Id.*

[19] *Id.; see also* EPA, *Definition of "Waters of the United States": Rule Status and Litigation Update, available at* https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update.

[20] *Id.*

[21] Sam Hess, *States, Industry Launch Broad Legal Attack on EPA's Amended WOTUS Rule*, INSIDEEPA, (Feb. 6, 2024), *available at* https://insideepa.com/daily-news/states-industry-launch-broad-legal-attack-epa-s-amended-wotus-rule.

[22] Sam Hess, *Groups Urge Officials To Expand Wetlands Protections In Wake of Sackett*, INSIDEEPA, (June 4, 2024), *available at* https://insideepa.com/daily-news/groups-urge-officials-expand-wetlands-protections-wake-sackett.

[23] *See* James M. McElfish, Jr., *What Comes Next for Clean Water? Six Consequences of Sackett v. EPA*, ENVIRONMENTAL LAW INSTITUTE, *available at* https://www.eli.org/vibrant-environment-blog/what-comes-next-clean-water-six-consequences-sackett-v-epa.

[24] LAURA GATZ & KATE R. BOWERS, CONG. RSCH. SERV. (R46615), CLEAN WATER ACT SECTION 401: OVERVIEW AND RECENT DEVELOPMENTS, (Aug. 24, 2022), *available at* https://www.crs.gov/Reports/R46615 [hereinafter R46615].

[25] *Id.; see also* CWA, *supra* note 1 at § 401.

[26] *Id.*

[27] *Id.*

[28] Exec. Order No. 13686, Fed. Reg. 7619, (Apr. 10, 2019), *available at* https://www.federalregister.gov/documents/2019/04/15/2019-07656/promoting-energy-infrastructure-and-economic-growth.

[29] R46615, *supra* note 26.

[30] *Id.*

[31] Clean Water Act Section 401 Certification Rule, 85 Fed. Reg. 42,210 (July 13, 2020).

tion.[32] In June 2021, EPA issued a notice of intent to amend the 2020 rule.[33] Finally, in November 2023, the Biden Administration's amended CWA Section 401 rule went into effect.[34] In particular, the rule again concerned timelines for review, appropriate project scope for section 401 certification, and what information is necessary for a certifying authority to include in its certification decision.[35]

V. SECTION 402: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Section 402 of the CWA authorizes the NPDES program for regulation of discharges of pollutants from point sources.[36] Point sources are defined as "any discernible, confined, and discrete conveyance, such as a pipe, ditch, channel, conduit, discrete fissure, or container" [37] from which pollutants may be discharged.

NPDES permits require the point source discharger to attain technology-based effluent limits, while specifying the numerical effluent limitations that sources must meet in order to guarantee water quality, where possible.[38] If technology-based limits are not sufficient to meet locally-established water quality standards, the CWA requires permittees to achieve more stringent water-quality based effluent limits designed to meet applicable water quality standards.[39] EPA is responsible for defining the level of treatment required for municipalities and various industries, as well as for developing minimum water quality criteria specifying the maximum concentrations of pollutants permitted for different designated uses of waters.[40]

NPDES permits are issued for up to five years and must be renewed thereafter if discharge is to continue.[41] Point sources may in some instances apply for a NPDES general permit as opposed to a NPDES individual permit. A NPDES individual permit is written for site-specific discharges that are unique to a specific location or discharge.[42] Conversely, NPDES general permits cover "multiple dischargers with similar operations and types of discharges." [43]

EPA runs the NPDES permitting program, but the CWA authorizes EPA to approve individual states and tribes to manage their own NPDES permitting programs.[44] Nearly all states have assumed administration of their own NPDES programs, with only three exceptions: Massachusetts, New Hampshire, and New Mexico.[45]

VI. SECTION 404: DREDGED OR FILL MATERIAL

Section 404 of the CWA authorizes a separate type of regulatory program for permits required to discharge dredged or fill materials. EPA and the Corps play complementary roles in implementing the section 404 program, with the Corps in charge of issuing permits for discharge of dredged or fill material, using a set of environmental guidelines promulgated by EPA, in conjunction with the Corps, to evaluate permit applications.[46] The Corps likewise administers the day-to-day pro-

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[32] Exec. Order 13,990, 86 Fed. Reg. 7037, (Jan. 20, 2021), *available at* https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis.

[33] Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule, 86 Fed. Reg. 29,541 (June 2, 2021).

[34] Clean Water Act Section 401 Water Quality Certification Improvement Rule, 88 Fed. Reg. 66,558 (Nov. 27, 2023), *available at* https://www.epa.gov/system/files/documents/2023-09/federal-register-version-of-2023-clean-water-act-section-401-water-quality-certification-improvement-rule.pdf.

[35] *Id.; see also* EPA, Fact Sheet, *Overview Fact Sheet on the Final 2023 Rule, available at* https://www.epa.gov/system/files/documents/2023-09/Overview%20Fact%20Sheet%20on%20the%20Final%202023%20Rule_508.pdf.

[36] CWA, *supra* note 1 at § 402; CRS REPORT RL30030, *supra* note 3; EPA, *NPDES Permit Basics, available at* https://www.epa.gov/npdes/npdes-permit-basics [hereinafter NPDES Permit Basics].

[37] NPDES Permit Basics, *supra* note 38.

[38] CRS Report 30030, *supra* note 3.

[39] EPA, *Water Quality-Based Effluent Limits, available at* https://www3.epa.gov/npdes/pubs/chapt_06.pdf.

[40] *Id.* at 48.

[41] NPDES Permit Basics, *supra* note 38.

[42] *Id.*

[43] *Id.*

[44] CRS Report 30030, *supra* note 3.

[45] *Id.*

[46] *Id.; see also* CWA, *supra* note 1 at § 404(b).

gram, including jurisdictional determinations (JDs), which certify the presence or absence of waters subject to CWA regulation.[47]

Similar to NPDES permits, section 404 permits are typically issued for a term of five years, and there are both individual and general permits.[48] The CWA authorizes the issuance of general permits for discharges that are "similar in nature, will only cause minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment"[49] and are issued on a nationwide, regional, or state basis for particular categories of activities.[50] According to the Corps, approximately 94 percent of the 62,000 permits approved in fiscal year 2022 were authorized by regional and nationwide permits, with the remainder authorized by individual permits.[51] Approximately 75 percent of the general permits were issued in 60 days or less and approximately 59 percent of the individual permits were issued in 120 days or less.[52] The most recent reissuance of nationwide permits (NWPs) went into effect in February 2022.[53]

Similar to the NPDES permitting process, EPA may also allow states and tribes to assume authority to grant or deny dredge and fill permits under section 404, with the condition that states or tribes develop a wetlands permit program consistent with the CWA.[54] Currently, two states are approved to manage their section 404 program: Michigan and New Jersey.[55] The status of the approval of a state-managed program for the State of Florida is under litigation.[56] In December 2024, EPA finalized a rule updating the regulations governing state and tribal assumption of section 404 permitting for the first time since 1988.[57]

VII. WITNESSES

- Mr. Robert D. Singletary, Executive Director, Oklahoma Department of Environmental Quality
- The Honorable Shawn M. LaTourette, Commissioner, New Jersey Department of Environmental Protection
- Mr. Noah Hanners, Executive Vice President, Nucor Corporation, *on behalf of the* National Association of Manufacturers
- Mr. Buddy Hasten, President and Chief Executive Officer, Arkansas Electric Cooperative Corporation, *on behalf of the* National Rural Electric Cooperative Association

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[47] EPA, *Permit Program under CWA Section 404, available at* https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404.

[48] *Id.*

[49] *Id.*

[50] *Id.; see also* CWA, *supra* note 1, at § 404(e).

[51] U.S. ARMY CORPS OF ENGINEERS DIGITAL LIBRARY, *FY2024 Corps Justification Sheets: Regulatory Program* at 12, *available at* https://usace.contentdm.oclc.org/digital/collection/p16021coll6/id/2350.

[52] *Id.*

[53] U.S. ARMY CORPS OF ENGINEERS, *Nationwide Permit Program, available at* https://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits-Program/.

[54] EPA, *State or Tribal Assumption of the CWA Section 404 Permit Program, available at* https://www.epa.gov/cwa-404/state-or-tribal-assumption-cwa-section-404-permit-program.

[55] *Id.*

[56] *Id.; see also* STATE OF FLORIDA, *State 404 Program, available at* https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program.

[57] Clean Water Act Section 404 Tribal and State Assumption Program, 89 Fed. Reg. 10,345 (Dec. 18, 2024).

AMERICA BUILDS: CLEAN WATER ACT PERMITTING AND PROJECT DELIVERY

TUESDAY, FEBRUARY 11, 2025

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in Room 2167, Rayburn House Office Building, Hon. Mike Collins (Chairman of the subcommittee) presiding.

Mr. COLLINS. The Subcommittee on Water Resources and Environment will come to order. I ask unanimous consent that the chairman be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

As a reminder, if Members wish to insert a document into the record, please also email it to DocumentsTI@mail.house.gov.

I now recognize myself for the purpose of an opening statement for 5 minutes.

OPENING STATEMENT OF HON. MIKE COLLINS OF GEORGIA, CHAIRMAN, SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

Mr. COLLINS. For 50 years, the Clean Water Act has functioned to improve the quality of rivers, lakes, and streams throughout the country, including in my home State of Georgia. Back in 1972, when Congress passed the Clean Water Act, they recognized the importance of a Federal-State partnership as crucial to improving water quality and to providing a regulatory system that communities could realistically follow.

While the Clean Water Act has had many successes in maintaining and improving water quality for the benefits of citizens and industries nationwide, it unfortunately has been used to slow or stop progress on important projects.

The Transportation and Infrastructure Committee has begun this Congress by focusing on the theme "America Builds" because we know how important it is to the well-being of our country that we remain a world leader in our transportation networks, infrastructure construction, and economic development.

The Clean Water Act is one of the most consequential laws that our country has, and it is important to ensure that it is being used to balance the goals of water quality with ensuring project completion, improving supply chain networks, and delivering economic prosperity.

In short, to let America build, the Clean Water Act needs to work.

States, manufacturers, energy producers, cities, farmers, builders, homeowners, utilities, and many others rely on a Clean Water Act permitting process that is easy to understand, easy to follow, and easy to implement. Unfortunately, too often these groups referred to as regulated communities are left in the dark or actively undermined by increased regulation under the CWA by trial lawyers looking to make a quick buck, entrenched bureaucrats who don't have the country's best interest at heart, and administrations who bend the knee to radical environmental activists.

Now is the time to revisit the Clean Water Act to ensure that it puts America first. To do this, we need to hear from those most affected by the law in order to know how we can improve our regulatory environment without decreasing protections for water quality.

President Trump has recognized the importance of unleashing our Nation's natural resources, ramping up energy production, and maintaining our physical infrastructure. These priorities will enhance the Trump administration's ability to pursue an America-first agenda that lets America build.

As the chairman of the Water Resources and Environment Subcommittee, I am looking forward to working with my colleagues to ensure excellence in the transportation and infrastructure space and furthering the President's goals.

Today's hearing marks an opportunity to do so by hearing from our witnesses on how to return the Clean Water Act to its goal of protecting our water bodies and allowing important projects to get done.

[Mr. Collins' prepared statement follows:]

Prepared Statement of Hon. Mike Collins, a Representative in Congress from the State of Georgia, and Chairman, Subcommittee on Water Resources and Environment

For over fifty years, the Clean Water Act (CWA) has functioned to improve the quality of rivers, lakes, and streams throughout the country, including in my home state of Georgia. Back in 1972, when Congress passed the CWA, it recognized the importance of a federal-state partnership as crucial to improving water quality, and to providing a regulatory system that communities could realistically follow.

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Mr. COLLINS. I now recognize Ranking Member Scholten for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. HILLARY J. SCHOLTEN OF MICHIGAN, VICE RANKING MEMBER, SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

Ms. SCHOLTEN. Thank you, Chairman Collins, and congratulations for your selection to lead the Subcommittee on Water Resources and Environment. I look forward to working with you, as the vice ranking member, in meeting the water-related needs of our Nation, our communities, and the hard-working families that we represent.

I am privileged to serve Michigan's Third Congressional District in Congress, representing miles of beautiful Lake Michigan shoreline. It is a district whose history, lifestyle, and economic well-being are bound with the health of the Great Lakes.

The Great Lakes are arguably the largest source of freshwater on the surface of the earth, containing roughly 20 percent of the world's freshwater supply. For our region, the protections of the Great Lakes and the health of our environment is not a partisan issue, it is something that is ingrained in our culture, as we responsibly teach the next generation to be good stewards of our environment.

Our quality of life and our very existence depend on clean water for everyday consumption—for commerce, recreation, and the overall economic vitality of the region. It supports our farmers who grow their crops from apples to pears, peach trees, and soybeans. It supports the foundation of the great craft beer that forms Beer City, USA, that I am so proud to represent.

That is why I am so deeply concerned with the harm that this administration and the allies in Congress are imposing on our clean water future.

In just 3 weeks, the President has thrown cities and towns into chaos by shutting down funding allocated by Congress for water infrastructure projects, including the historic investments in water infrastructure provided through the Bipartisan Infrastructure Law.

This disarray has forced communities of all sizes to reevaluate how to deliver critical water infrastructure projects and will result in these projects taking longer, costing more, and ultimately delaying critical local economic development, and environmental and public health benefits.

The administration's efforts will also undermine the roughly 28,000 jobs that are created for every $1 billion in water infrastructure investment, putting the jobs of laborers and manufacturers at risk, in addition to threatening our supply chains.

Finally, these actions will hit the wallets of hard-working American families who will see higher water bills because of this uncertainty, at the same time that inflation is back on the rise.

The silence of my colleagues across the aisle whose States and communities are equally impacted by the President's moves to undermine water infrastructure spending is somewhat surprising. It is my sincere hope that this silence is not a green light for further reduction in Federal water infrastructure spending. We need it more now than ever. Our communities cannot withstand further setbacks to Federal and State efforts to protect our water and our environment, and we cannot allow the President and his allies to burden American families with increased costs and public health risks.

I welcome my colleagues to join me as I stand firmly in defense of our Great Lakes and freshwater supplies across the country to ensure a healthy environment and a strong economy for future generations.

We can do both, and I look forward to working with anyone to realize this goal.

Thank you, Mr. Chairman. I yield back.

[Ms. Scholten's prepared statement follows:]

Prepared Statement of Hon. Hillary J. Scholten, a Representative in Congress from the State of Michigan, and Vice Ranking Member, Subcommittee on Water Resources and Environment

Thank you, Chairman Collins, and congratulations for your selection to lead the Subcommittee on Water Resources and Environment. I look forward to working with you as the Vice Ranking Member in meeting the water-related needs of our nation, our communities, and the hardworking families that we represent.

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taking longer, costing more, and ultimately delaying critical local economic development, environmental and public health benefits. The administration's efforts will also undermine the roughly 28,000 jobs that are created for every billion dollars in water infrastructure investment, putting the jobs of laborers and manufacturers at risk, in addition to threatening our supply chains.

Finally, these actions will hit the wallets of hardworking American families who will see higher water bills because of this uncertainty at the same time that inflation is back on the rise. The silence of my colleagues across the aisle whose states and communities are equally impacted by the President's moves to undermine water infrastructure spending is somewhat surprising. It is my sincere hope that this silence is not a green light for further reduction in federal water infrastructure spending. We need it more now than ever. Our communities cannot withstand further setbacks to federal and state efforts to protect our water and our environment, and we cannot allow the President and his allies to burden American families with increased costs and public health risks.

I welcome my colleagues to join me as I stand firmly in defense of our Great Lakes and freshwater supplies across the country to ensure a healthy environment and a strong economy for future generations. We can do both, and I look forward to working with anyone to realize this goal. Thank you, Mr. Chairman. I yield back.

Mr. COLLINS. The Chair now recognizes the ranking member of the full committee, Mr. Larsen, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair Collins, for holding this hearing on the ways we can ensure that job-creating infrastructure keeps America moving and reduces supply chain challenges.

This hearing is part of a series, "America Builds," and thanks to the Bipartisan Infrastructure Law, America is building again, and we need to keep it going.

Holding up job-creating investments will not help America build. Slashing the workforce of agencies that play a critical role in permitting these projects will not keep America building.

Congress invested $13.8 billion in the Bipartisan Infrastructure Law to upgrade wastewater systems, prevent pollution, and support the quality of life across the country. These investments are critical, providing a lifeline to communities struggling to maintain water quality.

These investments equal jobs. For every $1 billion invested in cleaning up pollution in your water, approximately 28,000 jobs are created, according to the National Utility Contractors Association.

These investments are helping drive the low 4-percent unemployment rate while modernizing our infrastructure.

In just the last few years, in my own district, Washington State's Second District, local workers are upgrading aging sewer and water equipment and protecting the local groundwater supply.

From a $1.4 million State Revolving Fund loan in Whatcom County for replacing antiquated equipment, to a $200,000 engineering review grant to the Lummi Nation for assessing their wastewater needs, these job-creating investments are making a difference.

And the work isn't finished. The most recent Environmental Protection Agency report on wastewater infrastructure needs esti-

mated we would need $271 billion nationwide over the next 20 years to meet the standards that keep pollution out of your water.

These challenges are not limited to one region; they affect communities from coast to coast, from my coast, to the chair's coast, to the inland lakes and rivers of the vice ranking member.

Part of keeping America building is improving permitting for infrastructure projects. Through the BIL, the Inflation Reduction Act, and the CHIPS Act, we are seeing the benefits of investing in the workforce and the technology necessary to approve projects.

Through investments in enhancing permitting efficiency across the Federal Government, the Biden administration reduced the median time to complete an environmental impact statement by 8 months—23 percent faster than Trump 1.0. So, let's keep that going.

We can invest in infrastructure and protect the environment at the same time, ensuring that America builds while also making sure America breathes clean air and drinks clean water.

When Congress passed the Clean Water Act over 50 years ago, Members recognized the effectiveness and importance of the comprehensive, pollution-prevention measures—stopping pollution before it happens rather than simply cleaning it up.

The Clean Water Act was enacted with an overwhelming bipartisan majority. Before this law, rivers and lakes served as little more than open sewers. Lake Erie was pronounced dead and Ohio's Cuyahoga River literally caught on fire.

But thanks to the Clean Water Act, the Cascade River in my district was designated as an Outstanding Resource Water by the State of Washington, which protects that river from future activities or development that would degrade water quality.

For decades, Republicans and Democrats shared these bipartisan principles to defend clean water, maintain a strong Federal-State partnership to protect our waters, stop pollution from entering the system in the first place, and support a robust Federal floor of protections while allowing States to do more, but not less.

And the Bipartisan Infrastructure Law shows what happens when Congress does the right things and funds infrastructure.

Step 1 to keep the progress going is to ensure that States and local governments can continue to depend on this Federal investment. Freezing funds from the State Revolving Fund, from the Superfund, or other EPA programs is a step backwards.

Predictable, reliable funding helps State and local government leaders make their decisions on allocating dollars to ensure the biggest bang for the buck.

Sowing chaos and uncertainty on Federal and State efforts to protect our water and environment will not continue to help the American people.

Working in a bipartisan fashion, Congress passed comprehensive environmental protection laws like the Clean Water Act and historic investments in infrastructure like the Bipartisan Infrastructure Law. I look forward to finding ways to build on these bipartisan accomplishments this Congress.

I want to thank our witnesses, all of them, for being here today. I look forward to your testimony, and with that, I yield back.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Collins, for holding this hearing on ways we can ensure job-creating infrastructure keeps America moving and reduces supply chain challenges.

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I look forward to finding ways to build on these bipartisan accomplishments this Congress.

Thank you to our witnesses for being here today. I look forward to your testimony.

Mr. COLLINS. All right. Thank you. I want to welcome our witnesses. Thank you for your time and for being here today.

We have with us today Mr. Robert Singletary, executive director of the Oklahoma Department of Environmental Quality; the Honorable Shawn LaTourette, commissioner of the New Jersey Department of Environmental Protection; Mr. Noah Hanners, executive vice president of the Nucor Corporation, on behalf of the National Association of Manufacturers; and Mr. Buddy Hasten, president and CEO of the Arkansas Electric Cooperative Corporation, on behalf of the National Rural Electric Cooperative Association.

I want to briefly go over the lighting system for you there in case you don't know. There are three lights. The green means you have plenty of time, the yellow means you need to start finishing up, and of course, the red means to go ahead and conclude with your remarks.

I am going to also ask for unanimous consent that the witnesses' full statements be included in the record.

Without objection, so ordered.

I also ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

As your written testimony has been made part of the record, the subcommittee asks that you limit your oral remarks to 5 minutes.

And with that, Mr. Singletary, you are recognized for 5 minutes for your testimony.

TESTIMONY OF ROBERT D. SINGLETARY, EXECUTIVE DIRECTOR, OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY; HON. SHAWN M. LATOURETTE, COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; NOAH HANNERS, EXECUTIVE VICE PRESIDENT, NUCOR CORPORATION, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS; AND BUDDY HASTEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ELECTRIC COOPERATIVES OF ARKANSAS, ON BEHALF OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

TESTIMONY OF ROBERT D. SINGLETARY, EXECUTIVE DIRECTOR, OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

Mr. SINGLETARY. Good morning, Chairman Collins, Vice Ranking Member Scholten, members of the committee. My name is Rob Singletary, and I have the privilege to serve as the executive director of the Oklahoma Department of Environmental Quality.

Thank you for the opportunity to appear before you this morning and to share Oklahoma's views on the implementation of various portions of the Federal Clean Water Act.

The Oklahoma Department of Environmental Quality is the primary agency responsible for protecting public health and the environment in the State of Oklahoma, and our responsibilities include the implementation of the Clean Water Act within our State.

This morning, my comments are focused primarily on section 401 of the Clean Water Act with just a few minor comments related to section 402 and "waters of the U.S."

To begin, Oklahoma is a fierce proponent of the proper implementation of cooperative federalism as well as the right of States to set their own water quality standards and to protect water quality within their borders.

Section 401 of the act provides a powerful and very important tool that allows States to ensure that water quality within their borders is properly protected.

However, the 401 certification process has been used in the past as an opportunity to address general or nonwater quality-related concerns. We feel strongly that this powerful tool should be reserved for efforts specifically related to water-resource protection.

We believe that allowing the scope of this review under this provision to be broadened beyond the protection of water resources would undermine the legitimacy of the 401 certification process and misalign it from the overall purpose of the Clean Water Act.

In addition, even if a particular State was not interested in expanding the process beyond the protection of water resources, third parties could potentially seek to force a State to address broader concerns through this process if a broader scope of review was adopted.

Even the scope of the current version of the rule, which purports to limit the 401 certification review to water-related impacts, is still ambiguous and potentially subject to misapplication.

This ambiguity expands the workloads of State agencies, complicates and lengthens the review process, and makes certification determinations more vulnerable to legal challenges, potentially

forcing State agencies to defend in court why they did or did not consider every potential water quality-related impact, no matter how distant or how unlikely.

This, of course, would be a very difficult legal standard to meet.

If statutory changes are ever considered, we advocate for clarifying language that would ensure that future EPA administrations are unable to expand the use of this process beyond the protection of water resources or beyond those water-quality impacts clearly attributable to the project at issue.

In regard to section 402, currently the States are only allowed to issue NPDES permits for periods of 5 years or less. We strongly support providing States with the flexibility, at their discretion, to issue NPDES permits for longer periods, up to 10 years.

Providing a longer period would provide more certainty for applicants, and it would effectively cut the permitting process in half over that 10-year period.

In regard to "waters of the U.S.," Oklahoma has not sought assumption of the section 404 permitting program. So, our permitting programs are focused solely on stormwater and direct discharge permits.

Since our agency has delegation under section 402 to issue NPDES permits into "waters of the U.S.," and since we have authority to issue discharge permits into all other waters of the State, our permitting programs are not significantly impacted by the welcome changes to the definition of "waters of the U.S.," under the Supreme Court's decision in *Sackett*.

However, we have heard from applicants within the State that they do continue to experience delays in receiving applicability determinations from our Federal counterparts.

We believe it would be useful if there was a joint Federal-State effort, employing the best available data and tools to map jurisdictional waters.

Of course, this type of initiative would require ongoing effort and some expense, but it would likely decrease permitting timelines and provide more clarity or certainty to applicants.

Again, thank you for the opportunity to participate in this important discussion. As always, we look forward to working with you, with our Federal co-regulators, and other stakeholders as we pursue our mission to protect and improve public health and the environment in a manner that supports and advances prosperity for current and future generations.

Thank you.

[Mr. Singletary's prepared statement follows:]

Prepared Statement of Robert D. Singletary, Executive Director, Oklahoma Department of Environmental Quality

TESTIMONY

Good morning, Chairman Collins, Ranking Member Wilson, and Members of the Subcommittee. My name is Rob Singletary and I have the privilege to serve as the Executive Director of the Oklahoma Department of Environmental Quality. Thank you for the opportunity to appear before you this morning and to share Oklahoma's views on the implementation of various portions of the Federal Clean Water Act.

The Oklahoma Department of Environmental Quality is the primary agency responsible for protecting human health and the environment in the State of Oklahoma, and our responsibilities include the implementation of the Clean Water Act within the State.

CLEAN WATER ACT SECTION 401

To begin, Oklahoma is a fierce proponent of the proper implementation of cooperative federalism, as well as the right of States to set water quality standards and to protect water quality (in general) within their boundaries. Section 401 of the Clean Water Act provides a powerful tool that allows States to ensure that water quality within their boundaries is properly protected. However, the § 401 certification process has been used (in the past) as an opportunity to address general or non-water quality related concerns. We feel strongly that this powerful tool should be reserved for efforts specifically related to the protection of water resources.

Although not directly an issue with the current rule, we believe that allowing the scope of review under this Clean Water Act provision to be broadened beyond the protection of water resources (as has been done in the past) would undermine the legitimacy of the § 401 certification process and misalign it from the overall purpose of the Clean Water Act. In addition, even if a particular State was not interested in expanding the process beyond the protection of water resources, third parties could potentially seek to force a State to address broader concerns through this process—if the broader scope of review was allowed.

Even the scope of the current version of EPA's implementing rule, which purports to limit the § 401 certification review to water related impacts, is still ambiguous and potentially subject to misapplication. For example, where a US Army Corps of Engineers permit would authorize discharges associated with building a pipeline, the current rule would require the certifying State to evaluate not only the effects of the discharges the Corps permit would authorize, but also any effects of operating the pipeline even though the operation may be subject to a different Federal license or permit. Effectively, this would result in the certifying authority addressing the adverse impacts contributed to by a federally licensed permitted activity, not just the adverse water quality impacts caused exclusively by the activity.

This ambiguity expands the workload of State agencies, complicates and lengthens the review process, and makes certification determinations more vulnerable to legal challenge—potentially forcing State agencies to defend in court why they did or did not consider every potential "water-quality related" impact of a project, a difficult legal standard to meet.

We don't anticipate that the current EPA administration will seek to broaden such review; however, if statutory changes are ever considered, we would advocate for clarifying language that would ensure that future EPA administrations would not seek to promulgate regulations expanding the use of this process beyond the protection of water resources or beyond those water quality impacts clearly attributable to the project at issue. It's important to mention that even in the event that unforeseen impacts to water quality were to occur, we (in Oklahoma at least) still have the authority to address any such pollution through our State program and State authority.

WATERS OF THE UNITED STATES (WOTUS)

In regard to WOTUS, Oklahoma has not sought authority under § 404 of the CWA, so our implementation (except for the 401 certification process) is focused solely on stormwater and discharge permits. Since our agency has delegation to issue NPDES permits into WOTUS under § 402 of the Act and since we have State authority to issue discharge permits in all other waters of the State, our programs (except, of course, for our § 401 certification program) are not directly impacted by the welcomed changes to the definition of WOTUS under the Supreme Court's decision in *Sackett*. However, we have anecdotally heard from applicants within the State that they continue to experience some delays in receiving Applicability Determinations from our Federal counterparts. We believe it would be useful if there was a joint Federal/State effort (employing the best available data and tools, of course) to map jurisdictional waters. This type of initiative would require ongoing effort, but it would likely decrease permitting timelines and provide more clarity or certainty to applicants.

CONCLUSION

Again, thank you for the opportunity to come before you and to participate in this important discussion. As always, we look forward to working with you, our federal

co-regulators, and other stakeholders, as we pursue our mission to protect and improve human health and the environment in a manner that supports and advances prosperity for current and future generations. Thank you!

Mr. COLLINS. All right. The Chair will now recognize Representative Pou to introduce our next witness, Commissioner LaTourette.

Ms. POU. Good morning, Chairman Collins, Ranking Member Scholten. Thank you for holding this hearing on one of the most vital and limited resources in our Nation: clean water.

I am privileged to represent the Ninth Congressional District of New Jersey, and today, I am truly honored to be able to introduce one of our witnesses today, an expert in environmental issues, a leader in the great State of New Jersey, and a friend, Commissioner Shawn LaTourette.

Commissioner LaTourette has over 25 years of experience in environmental quality assurance, natural resource management, and infrastructure development.

When I was in the New Jersey State Senate, I was proud to vote to confirm him 4 years ago as our commissioner of environmental protection.

Commissioner, thank you for joining us today.

Mr. COLLINS. Thank you.

Next, Commissioner LaTourette, you are recognized for 5 minutes for your testimony.

TESTIMONY OF HON. SHAWN M. LATOURETTE, COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. LATOURETTE. Well, good morning to this entire committee. Thank you for holding this important hearing on this topic. Chairman Collins, Vice Ranking Member Scholten, our own Congresswoman Pou, thank you very much, honored to join you.

I have the privilege of serving the 9.3 million residents that call New Jersey home as their commissioner of environmental protection.

I also serve as a part-time adjunct professor of environmental law at the Rutgers Law School, and prior to my public service career, I was an attorney adviser that specialized in transportation and infrastructure projects, giving counsel to regulated entities on permitting issues including under the Clean Water Act.

Today, I hope to offer this committee a perspective from New Jersey, the most densely populated State in the Nation, and the perspective of a State regulator, because, as you know, State entities, like the New Jersey Department of Environmental Protection, implement the Clean Water Act.

Much like this subcommittee's work to evaluate regulatory processes and look for opportunities to improve them, so too do my NJDEP colleagues, working to consistently improve our programs and services, and in doing so, we ask ourselves hard questions about how we can best achieve the delicate balance of promoting economic growth and protecting the public health and the environment.

In answering those questions, we ground ourselves in the fact that natural capital is always performing valuable services for the public.

Our air, our land, our fish, our wildlife, they are all doing important work that our fellow residents would have to pay for if we don't act thoughtfully to conserve our resources and invest in improvements.

For example, degrade the marshes and wetlands that filter our water for free, or permit the discharge of too many pollutants into our waterways, and our residents and taxpayers pay more to build and operate drinking water treatment plants.

There is a poignant example of this balance within one of New Jersey's most notable industries: tourism. Our small but densely populated State has one of the Nation's largest coastlines, breathtaking bays, tidal rivers, and the famed Jersey Shore that is home to millions and that millions more visit each year as their getaway.

As this subcommittee knows, the Clean Water Act is a program of cooperative federalism that relies upon partnership between the States and the Federal Government to effectuate the national goal of ridding ourselves of pollutants in waterways and achieving fishable and swimmable waters.

The beauty of cooperative federalism lies in how the law empowers and supports States in taking local considerations into account, while meeting minimum Federal standards, and you see that cooperative federalism at play in section 401.

Additionally, as one of only two States that have successfully assumed responsibility for implementing section 404, our wetland program provides another example of cooperative federalism under the Clean Water Act.

We initially sought assumption for two primary reasons: the first, to provide protective measures to minimize or avoid wetland disturbance, but importantly, to promote a streamlined, consistent, and more accessible permitting process, because in the absence of assumption, project applicants were often challenged to adhere to two different schemes under Federal and under State law.

In New Jersey, we have seen the stability of the wetlands program under 404 firsthand in that while under Federal law, 404 has been subject of perennial change, New Jersey's assumed program has remained stable for decades, unaffected by changes at the Federal level. And that is a level of continuity that our regulating community expects and demands.

And as this committee also knows, our Nation's water infrastructure is critically important and underfunded. Even with the infusion of a mass of resources from the Bipartisan Infrastructure Law, we still have a $1.2 trillion national need for water infrastructure investment over the next 20 years.

We in New Jersey have used our Clean Water State Revolving Fund Program to invest in our communities, the health of our waterways, and the businesses that need clean water to thrive.

What I hope this committee learns today from our discussion is that we always have to be careful not to overburden business with regulation and processes that may not be as valuable to the public. But we also have to recognize the inextricable link between economic development and environmental protection.

But let us not make false choices between a healthy environment and a healthy economy. Thank you.

[Mr. LaTourette's prepared statement follows:]

Prepared Statement of Hon. Shawn M. LaTourette, Commissioner, New Jersey Department of Environmental Protection

Good morning, Chairman Collins, Vice Ranking Member Scholten, and esteemed members of the Subcommittee on Water Resources and Environment. I am honored by your invitation to join this morning's Subcommittee hearing on "Clean Water Act Permitting and Project Delivery." For those members I have yet to meet, my name is Shawn LaTourette, and I have the privilege of serving the 9.3 million residents of the State of New Jersey as their Commissioner of Environmental Protection. I also serve as the chairperson of the Infrastructure Working Group of the Environmental Council of the States, the nonpartisan organization of state environmental leaders, and as an adjunct professor of environmental law at Rutgers Law School. Prior to my public service career, I was an attorney-advisor that specialized in transportation and infrastructure projects and provided counsel to private industry and public entities on permitting, including under the Clean Water Act.

Today, I hope to offer this Subcommittee a perspective from New Jersey—the most densely populated state in the nation—and the perspective of a state regulator, because, as you know, the Clean Water Act is largely implemented on the state level by agencies like the New Jersey Department of Environmental Protection (NJDEP).

The moniker "environmental protection" actually fails to capture the full scope of services that agencies like NJDEP provide for the public we serve—because our work sits squarely at the intersection of environmental, health, and economic improvement. We do not protect our environment simply because natural beauty should be recognized and preserved, but because the economic growth and long-term success of our communities demands that the government maintain the free public services that clean, healthy, and accessible natural capital provides for the people we all serve.

Much like this Subcommittee's work to evaluate regulatory processes and identify opportunities to expedite infrastructure development without sacrificing environmental quality, my NJDEP colleagues and I have committed ourselves to a practice of continual process improvement. As we work to consistently improve our programs and services, we ask ourselves hard questions about how best we can achieve the delicate balance of promoting economic growth while improving and protecting public health and the environment we all share.

In answering those questions, we ground ourselves in the fact that natural capital is always performing valuable but largely invisible services for the public. Our air, land, water, fish, wildlife and their habitats are all doing important work that our fellow residents and taxpayers would otherwise have to pay for if we do not act thoughtfully to conserve natural resources and invest in environmental improvements. Degrade the wetlands and marshes, which filter our water for free, or permit the discharge of too many pollutants into our waterways, and our residents will pay more to build and operate drinking water treatment plants. Remove too much riparian vegetation (i.e., the trees whose roots literally hold together our riverbanks and help control flooding) and our residents pay to build a flood wall where that forest once was that protected their community from riverine flooding.

In New Jersey, we see clearly our residents' expectation that their government will work to facilitate economic growth and opportunity while also improving and protecting water quality and, by extension, public health. There is a poignant example within one of New Jersey's most notable industries: tourism. Our small densely populated state has one of the nation's largest coastlines. Breathtaking bays, tidal rivers, and the famed Jersey Shore are home to millions, a cherished getaway for millions more, and an economic engine that helps powers our state and region. Our pristine beaches and quaint shore towns drive $50 billion in annual travel and tourism spending. And all of that depends on one thing: the quality of our waters.

THE VALUE OF COOPERATIVE FEDERALISM

As this Subcommittee knows, the Clean Water Act is a program of cooperative federalism that relies upon a partnership between the states and the federal government to effectuate our shared national goal of improving and maintaining the quality of our waterways. The beauty of cooperative federalism as seen through the Clean Water Act lies in how the law empowers and supports state regulatory programs in taking local conditions into account while meeting minimum federal standards. This enables states to integrate their more discrete natural resource and economic considerations when determining how best to improve water quality.

This cooperative federalism is at play in Section 401 of the Clean Water Act, which enables states to review federal actions or federally regulated activities that

may result in discharges to waters within a state's jurisdiction to ensure that federal action does not conflict with state water quality requirements, standards, or criteria. As just one New Jersey example of Section 401 in practice, note that NJDEP routinely denies a Water Quality Certification for all nationwide permits (NWPs) adopted by the U.S. Army Corps of Engineers. This denial is grounded in the fact that New Jersey administers its own water quality and related programs that have historically exceeded minimal federal standards. In short, NJDEP offers statewide general permits for the same activities governed by the NWPs, but with different and more stringent criteria. Thus, we routinely find that the NWPs do not adequately protect the health and safety of our jurisdictional waters. The practical application is that permit applicants must obtain a state permit for activities that would otherwise be subject to the NWPs.

As one of only two states that have successfully assumed responsibility for implementing Section 404, New Jersey's wetland program provides another important reflection on cooperative federalism under the Clean Water Act. New Jersey sought assumption to achieve two primary goals: (1) ensure protective measures that avoid or minimize wetland disturbance and (2) provide a streamlined, consistent, and more accessible permitting process. In the absence of assumption, project applicants were often challenged to adhere to two different but overlapping permitting processes at both the state and federal levels. With assumption, receipt of a state-issued permit obviated the requirement for a federal permit for the same regulated activity, especially since New Jersey's wetland program exceeds federal minimum standards.

Very importantly, assumption has provided a measure of consistency and reliability for New Jersey's regulated community. As federal implementation of Section 404 has been the subject of perennial change, New Jersey's assumed program has remained stable for several decades because state wetlands law remains unaffected by changes at the federal level. New Jersey's regulated community has appreciated this stability and has advocated for the State assumption. Additionally, assumption has enabled New Jersey to integrate its wetland program with other water-resource and watershed-management functions to implement one comprehensive program. As a result, NJDEP staff consider potential impacts more completely and seek to avoid or minimize potential conflicts resulting from isolated programs doing isolated reviews. This is both efficient and more protective of human health and the environment.

The Criticality of Water Infrastructure Investment

As this Subcommittee knows all too well, our nation's infrastructure is the backbone of our economy. We rely on water system assets to ensure that our people, communities, and businesses can thrive. As the most densely populated state in the nation, and with a thriving commercial and industrial sector, the stakes are particularly high for New Jersey when it comes to water infrastructure. The most recent Clean Water and Drinking Water needs surveys estimate twenty-year nationwide needs of over $1.2 trillion, which includes $31.6 billion in needs in New Jersey. Clean Water needs alone are estimated at $630 billion nationally over the next twenty years, which includes $19.4 billion in needs in New Jersey.

Over the last several years, New Jersey has put its base Clean Water State Revolving Fund capitalization grants and the added funds made available under the Bipartisan Infrastructure Law to work for the people, communities, and business of our state. The continuity of these federal funding sources is critical to our Water Infrastructure Investment Plan, which brings state, federal, and private market funds together to extend the reach and impact of our investments. With crucial federal support, our New Jersey Water Bank facilitated more than $1 billion of water infrastructure investments in the prior state fiscal year—the most project value facilitated in a single year.

All told, over the life of our water infrastructure program, the New Jersey Water Bank has issued $9 billion in low-interest long-term loans and has an additional $2 billion in short-term construction loans outstanding. Importantly, through reduced interest costs and principal forgiveness, these funding programs have saved New Jersey taxpayers $3.2 billion. The positive impact of these programs on our State's economy cannot be understated. Beyond the fact water infrastructure investments enable our communities and businesses to grow and thrive, our funding program itself has generated nearly 170,000 direct, one-year construction jobs throughout New Jersey.

The uncertainty created by intended or suspected disturbance to longstanding and reliable federal funding sources too cannot be understated. As an example, our water infrastructure funding program runs concurrent to our state fiscal year, which

begins July 1. This means that right now, we are in the process of formulating our Clean Water SRF Intended Use Plan, which provides water utilities, contractors, and others in the regulated community with guidance about how best to sequence years-long infrastructure projects to maximize savings. A disruption in federal funding for Clean Water programs, even a temporary freeze, has cascading effects across the water sector and other industries, and can lead to the delay or abandonment of projects that are critical to economic development and to the protection of public health and the environment.

CONCLUSION

In administering Clean Water Act permitting and funding programs, my NJDEP colleagues and I are ever mindful of the balance we must strike. We must always be careful not to overburden business with regulation and process that may not be as valuable to the public. We must also be attentive to the reality that the environmental externalities we fail to avoid or correct in one sector often become a cost dislocated to another sector, and that taxpayers are too often the ones left holding the bag. For example, the externalities wrought by a lack of adequate pollution control on wastewater discharges must inevitably be addressed and can fall unfairly upon the shoulders of other users of a waterway—be it the taxpayer-funded drinking water system that must now remove those pollutants, the commercial or recreational fisherman foreclosed from waters that are not fishable, or the disruption of tourist-serving businesses that line beaches forced closed due to poor water quality.

New Jersey has a long, proud, and bipartisan history of exceeding minimum federal standards for water quality, knowing that the quality of our waters bears directly upon our economic vitality. We view the protection and improvement of public health, safety, and the environment as a sound investment—because that is what our residents and economy demand. This Subcommittee may find that New Jersey provides an important case study for achieving balance among environmental quality and economic goals. We have assumed responsibility for critical sections of the Clean Water Act, enacted additional state-based water quality laws, and continued to grow our economy as we improve and protect public health and the environment. New Jersey is proof that a dynamic balance is possible without upending the Clean Water Act, which has not yet achieved its national goal of eliminating pollutant discharge into navigable waters and ensuring water quality that is fishable and swimmable. Let us not make false choices between a healthy environment and a healthy economy. Let us work instead to unite the forces of economic development and environmental improvement to promote the public good.

Mr. COLLINS. All right. Thank you.

The Chair now recognizes Mr. Hanners for 5 minutes to give his testimony.

TESTIMONY OF NOAH HANNERS, EXECUTIVE VICE PRESIDENT, NUCOR CORPORATION, ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. HANNERS. Good morning, Chairman Collins, Ranking Member Larsen, Vice Ranking Member Scholten, and members of the subcommittee. My name is Noah Hanners, and I am proud to serve as executive vice president at Nucor Corporation, where I oversee our sheet products group.

Nucor is the largest and most diversified steel producer in the United States and the largest recycler of any type of material anywhere in North America, and we are the only American steel producer that makes 100 percent of its steel here in America.

Specifically, our method has a fraction of the carbon footprint and roughly 10 percent of the particulate emissions compared to an average integrated steel mill.

We use 95 percent less water than an average steel mill, and we capture and reprocess 86 percent of the process water we reuse before discharging.

Several of our 26, and soon to be 28, steel mill facilities also have strategically constructed stormwater retention ponds to capture stormwater runoff.

Manufacturers like Nucor create good jobs, drive innovation, and build our modern digital economy, all while making our environment cleaner.

But right now, cumbersome and overreaching permitting regulations are holding back progress and hurting our Nation's competitiveness. And we are not alone in this view.

In a recent survey of manufacturers, 72 percent said that the length and complexity of the permitting process affects their investment decisions.

If we want to grow America's economy, we need to fix this broken system.

Nucor can speak firsthand to the difficulties of navigating the Federal permitting process. In 2022, we announced the selection of Apple Grove, West Virginia, as the location for a new state-of-the-art sheet mill. At $3.5 billion, it is the largest manufacturing investment in the State's history.

Nucor sheet mills create an average of 800 full-time, high-paying manufacturing jobs, and we are proud to have already hired 300 West Virginia teammates. In addition, we anticipate approximately 2,000 contracting teammates at peak construction.

The strategic location of the mill on the Ohio River required us to seek Federal authorization under section 404 of the Clean Water Act.

As a responsible industry partner, we worked diligently with State and Federal agencies to gain the necessary approvals and begin turning dirt.

The permitting process was onerous. It required us to work with multiple Federal agencies with little direction and unclear timelines. This led to moving targets for our planning and execution, delaying the project and increasing costs.

America can do better to help manufacturers create good jobs in our communities while continuing to protect our environment.

Manufacturers have long advocated for commonsense permitting reforms. The National Association of Manufacturers supported bipartisan efforts, during the previous Congress, to update the NEPA process and speed up construction of energy projects.

Working together, policymakers can continue progress to achieve lasting, comprehensive permitting reform and make positive changes to our Nation's environmental laws.

This is critical as manufacturers contend with standards that are unreasonable and unworkable, such as those for PFAS and particulate matter.

Serious reforms should include manufacturers' priorities to provide certainty, streamline the permitting process, and give the regulated community a seat at the table.

This may be accomplished through changes to environmental laws, like the Clean Water Act, that expedite judicial review, create enforceable deadlines, and increase the use of categorical exclusions.

Last Congress, this committee took important steps toward reforming the Clean Water Act by advancing the Creating Confidence in Clean Water Permitting Act.

As you continue this work in the current Congress, we ask you to consider several areas for Clean Water Act reform: clarifying timelines for agency action and decisions during the permitting process; establishing clear, commonsense definitions regarding the scope of project areas subject to permitting and consultation requirements; provide certainty that permitting decisions are determinative and help prevent never-ending litigation; promote the use of general permits and speed up projects with limited impact on the environment; ensure the use of best available science when setting guidelines and rules; encourage State assumption of permitting responsibilities; and focus State authority under the Clean Water Act on water quality.

Nucor and America's manufacturers are the most advanced and sustainable in the world. Comprehensive permitting reform that increases certainty and removes unnecessary bureaucratic hurdles will enhance American economic competitiveness and protect our environment.

I encourage you to seize this opportunity, because when manufacturing wins, America wins. Thank you, and I look forward to your questions.

[Mr. Hanners' prepared statement follows:]

Prepared Statement of Noah Hanners, Executive Vice President, Nucor Corporation, on behalf of the National Association of Manufacturers

Chairman Collins, Ranking Member Wilson, and members of the Subcommittee, my name is Noah Hanners, and I am proud to serve as Executive Vice President at Nucor Corporation where I oversee our sheet products group, which is comprised of six steel mills that make flat-rolled steel products for automotive, appliance, construction, pipe and tube and many other industrial and consumer applications.

Nucor is the largest and most diversified steel producer in the United States and the largest recycler of any type of material anywhere in North America. And, among America's three largest steel producers, we are the only one that still makes 100 percent of its steel here in America. Each year, our company recycles more than 20 million tons of ferrous scrap to produce more than a quarter of all the raw steel made in the U.S. This steelmaking method makes us one of the cleanest and most sustainable producers in the world. Specifically, our method has a fraction of the carbon footprint and roughly 10 percent of the particulate emissions compared to an average integrated steel mill. In addition, we use 95 percent less water than an average steel mill, and we capture and reprocess 86 percent of our process water for reuse before discharging. Several of our 26—soon to be 28—steel mill facilities also have strategically constructed stormwater retention ponds to capture stormwater runoff. Nucor is not only one of the cleanest and most efficient steelmakers in the world, but we are also one of the safest, with a steelmaking injury and illness rate that has consistently been at least 30 percent below the industry average year after year.

Manufacturers like Nucor create well-paying jobs, drive innovation and build our modern digital economy—all while developing and deploying technologies that make our environment cleaner. When manufacturing wins, America wins. But right now, cumbersome and overreaching permitting laws and regulations are holding back progress, delaying investments and making it harder to compete globally. Permitting delays, red tape and complicated bureaucracy make it difficult to complete projects that benefit communities across the country, especially for capital intensive industrial manufacturers like ours. It is no surprise that in a 2024 survey of manufacturers, 72 percent of respondents said that the length and complexity of the per-

mitting process affected their investment decisions.[1] That's the real problem. If we want to grow America's economy, we need to fix this broken system.

Nucor can attest first-hand to the difficulties of navigating federal permit processes. In 2022—we announced the selection of Apple Grove—West Virginia—as the location for a new state-of-the-art sheet steel mill. At $3.5 billion—it is the largest manufacturing investment in the state's history. Nucor's sheet mills create an average of 800 full-time, high-paying manufacturing jobs, and we are proud to have already hired 300 West Virginia teammates. In addition, we anticipate approximately 2,000 contracting teammates at peak construction.

Our new steel mill is strategically situated on the Ohio River, which will provide logistical and transportation advantages and will better enable us to supply automotive, construction and industrial customers in the Midwest and Northeast regions, areas which consume half of the sheet steel in the U.S. Locating along a major navigable water of the U.S. precipitated the need for federal authorization under Section 404 of the Clean Water Act. While we worked diligently with our state and federal partners to secure the necessary permits to construct the facility's barge loading and unloading dock, the process became hindered by numerous requests from multiple parties for more information, additional studies or investigations and reformatting of previously submitted documents. These frustrating delays stemmed largely from consultation requirements under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act, which are characterized by overly vague and subjective timelines and lack of agency coordination and guidance. Based on Nucor's nearly six decades of experience building industrial facilities across the country, these tasks were far beyond the original scope of work and unnecessarily delayed the final permit decision—and thus the project—by several months. And delays in today's economic environment cost money. What was first announced as a $2.7 billion project is now a $3.5 billion project. We are excited for our future and to bring this transformative project to the state of West Virginia, but without the hard work and persistence from our federal, state and local representatives, this project may have never broken ground.

Manufacturers have been building a case for commonsense reforms to our nation's permitting laws for years. I'll say it again: we need *commonsense permitting reforms*. The National Association of Manufacturers supported bipartisan efforts during the previous Congress to update processes under the National Environmental Policy Act and speed up construction of critical energy projects. For example, manufacturers supported the permitting reforms made in the Fiscal Responsibility Act of 2023. The correct implementation of this statute is both important to the industry as well as germane to any conversation about CWA reforms, particularly regarding agencies evaluating "reasonably foreseeable" impacts and alternatives in the permitting process.

And while today's focus is on CWA reform, this is only the beginning. Working together, policymakers have a real opportunity to achieve lasting, comprehensive permitting reform and effect positive changes to our nation's environmental standards that support economic growth while protecting our communities. For example, while manufacturers support efforts to remove per- and polyfluoroalkyl substances (PFAS) and other potentially harmful chemicals from our water systems, overly-severe standards proposed by the Environmental Protection Agency make compliance impossible and directly threaten our ability to invest, innovate and create jobs in America. And while our air quality standards for particulate matter (PM2.5) are necessary for public health, the unreasonably tightened limits for emissions of fine particles or soot which took effect last year are placing an unnecessary regulatory burden on our manufacturers and making permitting harder—hindering onshoring and raising global emissions.

Our U.S. manufacturing sector is cleaner than at any other time in history and cleaner than foreign competitors. That is why we strongly believe that comprehensive permitting reform is critical, and such reform must include American manufacturers' priorities that provide regulatory certainty, streamline the permitting process and give the regulated community opportunity for input when establishing the rules under which they will operate. Policymakers may accomplish these goals through changes to underlying statutes that expedite judicial review, create enforceable deadlines for agencies and increase the use of categorical exclusions.

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[1] National Association of Manufacturers, NAM Manufacturers' Outlook Survey, First Quarter 2024 (March 5, 2024), *available at* https://nam.org/2024-first-quarter-manufacturers-outlook-survey/.

CLEAN WATER ACT REFORM RECOMMENDATIONS

As Nucor's experience with our West Virginia site illustrates, the CWA is a statute wherein thoughtful changes would benefit and advance economic development projects across the nation. Last Congress, this committee took steps toward reforming the CWA by reporting out and securing passage by the House of Representatives of the Creating Confidence in Clean Water Permitting Act. Among other changes, the legislation would have instituted reforms to permitting programs under Section 402 and Section 404 of the CWA to support the use of general permits under the programs, as well as to set guidelines on judicial review and enhance the National Pollutant Discharge Elimination System (Section 402) permit shield.

Manufacturers commend the committee for its attention to CWA reform and the advancement of critical infrastructure and economic development projects. As the committee pursues this important work in the 119th Congress, we respectfully request that members consider several areas for improvement.

I. Timelines

Clarified timelines for agency action and decisions for a Section 404 permit will assist applicants with project planning and execution. Currently, those seeking an individual permit are often caught in a winding process with multiple decision-makers and nebulous timelines. For example, the Army Corps of Engineers district office will delay action for the entire permit area while awaiting approval from the U.S. Fish and Wildlife Service for a specific portion of the project.

II. Scope

Similar to establishing timelines for agency decisions, clear and understood definitions as to the scope of project areas subject to Section 404 permitting requirements will help applicants with planning and execution. Over the past decade and more, manufacturers and others in the regulated community have been caught in a regulatory morass because of a prolonged disagreement over the definition of waters of the U.S. This has resulted in delays and confusion in the jurisdictional determination process by USACE. Furthermore, USACE recently proposed to update its regulations for implementing Section 106 of the NHPA, potentially expanding the scope of areas of a project where agencies will need to consult on effects on historic properties, elongating delays.

III. Permit certainty

Once a permit is granted or a particular activity is verified as authorized under a general permit, the permittee should have a high degree of certainty that the agency's action is determinative. Limiting the timeline for judicial review and supporting the permit as shield will cut down on unnecessary litigation that delays projects and adds costs. Reasonable restrictions to the EPA's authority under Section 404(c) of the CWA to prohibit areas as disposal sites—limiting retroactive vetoes of permits—will likewise increase confidence in the permitting process.

IV. General permits

The use of general permits should be promoted to the maximum extent practicable for those projects with limited impact on the environment. This may be accomplished through several means, such as extending the time between reissuance and limiting politically-charged reviews, as well as defining the scope of environmental effects during issuance or reissuance.

V. State assumption

State assumption of Section 404 permitting responsibilities should likewise be encouraged. States know best about their water resources and are better able to be responsive to applicants throughout the permitting process. Unfortunately, progress in this area has been hampered by subsequent litigation following approval of state assumption, with the State of Florida as a recent example.

VI. Water quality certification

Promoting federalism in the administration of the CWA should not be permission for states to go outside the bounds of statutory authority, however. It is important to focus state responsibility pursuant to Section 401 of the CWA on project impacts to water quality specifically. Unfortunately, some states have recently used this authority to block important interstate projects critical for dependable energy use.

* * *

Nucor and America's manufacturing sector are the most advanced and sustainable manufacturers in the world. We are proof that we can both protect the environment,

while also creating well-paying jobs and strengthening our local communities. Comprehensive permitting reform that increases certainty for the regulated community while removing unnecessary bureaucratic hurdles will both enhance America's economic competitiveness and protect our environment. When manufacturing wins, America wins.

Thank you for inviting me to testify today and share our story. I look forward to your questions.

Mr. COLLINS. Thank you.

Next, Mr. Hasten, you are recognized for 5 minutes for your testimony.

TESTIMONY OF BUDDY HASTEN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ELECTRIC COOPERATIVES OF ARKANSAS, ON BEHALF OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Mr. HASTEN. Good morning, Chairman Collins, Vice Ranking Member Scholten, and members of the subcommittee. Thank you for the opportunity to testify before you today.

My name is Buddy Hasten, and I serve as president and CEO of the Arkansas Electric Cooperative Corporation, AECC, and Arkansas Electric Cooperatives, Incorporated, AECI.

It is an honor to be before you today to talk about how we can better serve our members and your constituents.

AECC is a generation and transmission cooperative based in Little Rock, Arkansas, that proudly provides power for approximately 1.2 million members of Arkansas' 17 electric distribution co-ops.

AECI is the Arkansas statewide trade association which provides education, public relations, Government relations, and other support to the electric distribution co-ops in Arkansas.

Reliable and affordable electricity is essential to America's economic growth, and as our Nation increasingly relies on electricity to power our economy, keeping the lights on has never been more important or more challenging.

For example, Arkansas is losing 3,800 megawatts of baseload power in the near future, while simultaneously facing a tremendous increase in electricity demand from data centers and manufacturing facilities.

Reasonable and efficient environmental regulations, including permitting programs under the Clean Water Act, are often the critical link in being able to successfully complete a project on time to meet the growing generation demands of an electric co-op.

It takes several years to plan a transmission route or pick a viable property site to build a new powerplant. It is essential that Federal permitting programs, including those under the Clean Water Act, are implemented as intended by Congress and do not unnecessarily delay or hinder critical infrastructure projects that deliver electricity to homes, businesses, and farms across the country.

Because electric co-ops are owned and governed by the consumer members that we serve, we are committed to protecting and maintaining clean water within our communities.

However, having clean water is not, and should not be, mutually exclusive with having permitting programs that are reasonable, ef-

ficient, and meet the needs of our growing and ever-changing economy. We can and we should do both.

Electric co-ops rely on clean water permits to build new generation facilities, build transmission and distribution lines in a timely manner, perform routine maintenance and repair work, restore service after hurricanes or other natural disasters, and to undergo vegetation management practices along electric utility rights-of-way to prevent damage and wildfires.

All of these actions are a huge part of our work in providing reliable and affordable electricity to our consumer members.

To provide just one example, a few years ago, my co-op applied for an approved jurisdictional determination within the U.S. Army Corps of Engineers to determine whether a Clean Water Act permit was needed for a new electrical transmission-switching station—a very important new piece of infrastructure for us.

In the meantime, just to be safe and to try to expedite the process, we went ahead and applied for a Clean Water Act permit. We did not receive a permit decision within the 9-month timeframe initially predicted by the Corps, resulting in a delayed start for our project.

Then over a year after our original Clean Water Act permit application, the Corps informed us that a Clean Water Act permit would not be needed for the project.

Ultimately, AECC was subjected to the Corps' application requirements, construction delays and increased costs, and the associated risks of a Clean Water Act permit denial, for the Corps to determine that no Clean Water Act permit would be needed for the project—a decision that could have easily been determined as early as AECC's first meeting with the Corps 1 year earlier.

This is a pivotal time for my co-op. As we plan to meet the quickly growing demands of our members, a more predictable and efficient process for securing those permits for our electric infrastructure would help us better meet those challenges.

Thank you again for the opportunity to testify on this important issue. I look forward to responding to any questions. Thank you.

[Mr. Hasten's prepared statement follows:]

Prepared Statement of Buddy Hasten, President and Chief Executive Officer, Electric Cooperatives of Arkansas, on behalf of the National Rural Electric Cooperative Association

INTRODUCTION

Chairman Collins, Ranking Member Wilson, and Members of the Water Resources and Environment Subcommittee, thank you for the opportunity to testify before you today. My name is Buddy Hasten, and I serve as President and CEO of Arkansas Electric Cooperative Corporation (AECC) and Arkansas Electric Cooperatives, Inc. (AECI), which along with Arkansas' 17 electric cooperatives are collectively known as the Electric Cooperatives of Arkansas. I am testifying today to provide my own insights as a co-op leader but also representing the National Rural Electric Cooperative Association (NRECA) and the nearly 900 electric cooperatives across the country it represents.

AECC is a generation and transmission (G&T) cooperative based in Little Rock, Arkansas that was established in 1949. AECC proudly provides power for approximately 1.2 million members of Arkansas' 17 electric distribution cooperatives. Specifically, AECC generates, sells, and delivers reliable and affordable wholesale electric energy, along with related services to Arkansas' electric distribution co-ops.

AECI, formed in 1942, is the Arkansas statewide trade association, which provides education, public relations, government relations, and other support to the electric distribution co-ops in Arkansas. AECI also sells electric utility materials and equipment and provides related services to and for electric utilities across the United States.

NRECA is the national trade association representing nearly 900 rural electric cooperatives across the country including 64 G&T cooperatives and 832 distribution cooperatives. America's electric co-ops comprise a unique sector of the electric industry. These not-for-profit entities are independently owned and governed by the people they serve. From growing exurban regions to remote farming communities, electric co-ops provide power to 42 million Americans across 48 states. They keep the lights on across 56% of the American landscape—areas that are primarily residential and sparsely populated. Those characteristics make it comparatively more expensive for electric co-ops to operate than the rest of the electric sector, which tends to serve more compact, industrialized, and densely populated areas. This means that co-ops are constantly asked to do more with less, and they deliver.

Reliable and affordable electricity is essential to America's economic growth. And as our nation increasingly relies on electricity to power our economy, keeping the lights on has never been more important—or more challenging. For example, Arkansas is losing approximately 3,800 megawatts of baseload power in the near future while simultaneously facing a tremendous increase in electricity demand from data centers and manufacturing facilities.

Reasonable and efficient environmental regulations, including permitting programs under the Clean Water Act (CWA), are often the critical link in being able to successfully complete a project on time in order to meet the growing generation demands on AECC. It takes several years to plan a transmission route or pick a viable property site to build a new power plant. It is essential that federal permitting programs—including those under the CWA—are implemented as intended by Congress and do not unnecessarily delay or hinder critical infrastructure projects essential to delivering electricity to homes, businesses, and farms across the country.

Because electric co-ops are owned and governed by the consumer-members that we serve, we are committed to protecting and maintaining clean water within our communities. However, having clean water is not and should not be mutually exclusive with having CWA permitting programs that are reasonable, efficient, and meet the needs of our growing and ever-changing economy. Congress can and should address the difficulties that the regulated community is facing with permitting under the CWA.

SECTION 404 PERMITS

Nationwide Permits

While providing electricity over long distances, power lines must occasionally cross wetlands and other "waters of the U.S." (WOTUS), requiring authorization under CWA Section 404. Nationwide Permits (NWPs) are developed and issued by the U.S. Army Corps of Engineers (Corps) and authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment. Electric co-ops depend on CWA Section 404 permits, and on NWPs in particular, to build transmission and distribution lines in a timely manner; perform routine maintenance or repair work on those lines; restore service after hurricanes or other natural disasters; and to undergo certain vegetation management practices along electric utility rights of way to prevent damage and wildfires.

The availability of NWPs is critically important to electric co-ops as an environmentally protective means to streamline work on critical infrastructure while controlling unnecessary costs. Without NWPs, electric co-ops would be required to coordinate every planned utility line project with the Corps to find alternative CWA authorizations such as individual Section 404 permits. This could result in years of additional delays and substantial additional costs. For example, the Corps reported that in fiscal year 2018, the average time to process a standard individual permit application under Section 404 was 264 days, while the average time to process a NWP authorization was 45 days. Increased costs that result from delays are passed directly on to co-op consumer-members.

Because NWPs are issued by the Corps for a period of no more than five years, fifty-seven NWPs are set to expire in March of 2026. It is essential that the Corps prioritizes reauthorizing the expiring NWPs. This requires time-consuming steps like complying with CWA section 401 requirements and working with Corps districts to add regional conditions which are critical for complying with statutes like the Endangered Species Act (ESA). We look forward to working with the Committee and the new administration to ensure that such permits are reauthorized expedi-

tiously so that electric co-ops can continue to provide reliable and affordable electricity to our consumer-members without undue costs and delays.

Electric co-ops also support needed efforts to streamline the NWP program. For example, in 2023, AECC was required to perform repairs on one of its hydropower plants, which had been previously permitted under a Section 404 permit when the plant was built. Due to the nature of hydropower plants, repairs must be performed quickly when low river water levels in the Arkansas River allow. AECC met with the Little Rock District of the Corps and determined that a NWP 3 was needed. NWP 3s are for "maintenance" repairs and are designed to speed up the CWA permitting process for projects with minimal environmental impacts. Nevertheless, the permitting and review process to receive temporary construction authorization under NWP 3 took nine months. During that time, the river water levels rose to historically high levels, causing the repair window to close and exposing AECC's hydropower plant to increased risks of damage. Furthermore, because the temporary construction authorization that AECC received in compliance with the CWA is valid for only five years, AECC has no guarantee that it will be able to utilize the approval, should river conditions not be satisfactory for repair work within the remaining short timeframe.

Additionally, many electric co-ops apply for Rural Utilities Service (RUS) loans under the U.S. Department of Agriculture to support critical generation and transmission projects. Electric co-ops are required to comply with National Environmental Policy Act (NEPA) reviews when RUS funded projects require wetland delineations, endangered species reviews, and other possible project surveys. If a RUS-funded project requires a Section 404 permit, the Corps will require the submission and processing of much of the same information required by and submitted to RUS. This process creates additional barriers without assurance that the federal agencies will align. Improvements to communication and collaboration between federal agencies would better streamline this process.

NRECA supports provisions in last Congress's House-passed H.R. 7023, Creating Confidence in Clean Water Permitting Act, that would provide additional certainty regarding required ESA and NEPA reviews for Section 404 permits, prevent the EPA from vetoing a Section 404 permit before a permit application has been filed or after a permit has already been issued by the Corps, set reasonable judicial review timelines for Section 404 permits, and other provisions that would ensure the continued use of NWPs for linear projects like transmission lines. We look forward to working with the Committee to advance similar and additional policies to streamline the NWP permitting process.

Approved Jurisdictional Determinations

Obtaining Approved Jurisdictional Determinations (AJDs) is an essential step in the CWA 404 permitting process. The AJD process is used by the Corps to determine whether aquatic resources in a given area are jurisdictional under the CWA and therefore must require CWA permits. NRECA is aware of some instances in which AJD applicants have had to wait over 18 months just for a decision from the Corps, which only then determines whether the waterbody in question is jurisdictional and whether the applicant must undergo the CWA 404 permitting process which can take another couple years. Such delays impede the ability of electric co-ops to begin critical infrastructure projects and make investment decisions needed to meet rising electricity demands.

For example, AECC met with the Little Rock District of the Corps to discuss whether a CWA permit would be needed for a new electrical transmission switching station AECC planned to build. Based on the initial meeting, AECC was not told one way or another whether we should submit a formal permit application but gathered that a CWA permit would be needed. To be good actors and act in good faith, AECC submitted a formal AJD request. Based on information provided by the Corps, AECC expected that the Corps would issue a permit decision in approximately nine months from the application date. AECC did not end up receiving a permit decision within the nine-month timeframe initially predicted by the Corps, resulting in a delayed start date for AECC's project. Then, over one year after AECC's original CWA permit application, the Corps informed AECC that a CWA permit was not needed for the project.

Ultimately, AECC was subjected to Corp's application requirements, construction delays and increased costs, and the associated risks of a CWA permit denial, for the Corps to determine that no CWA permit would be needed for the project—a decision that could have easily been determined as early as AECC's first meeting with the Corps over one year earlier. To be clear, AECC had to wait for over a year just to be told that we could have proceeded with the project from the beginning without any CWA permit.

To prevent similar delays in the CWA permitting process, electric co-ops are eager to work with this Committee and the new administration to ensure that the Corps immediately prioritizes responding to AJD requests.

SECTION 402 PERMITS

Electric co-ops build and maintain power plants, substations, and other infrastructure to meet increasing electricity demands and provide reliable and affordable electricity to their consumer-members. These facilities usually need to obtain a National Pollutant Discharge Elimination System (NPDES) permit under section 402 of the CWA. NPDES permits regulate discharges of pollutants through a point source into WOTUS and reflect both technology-based controls—known as Effluent Limitation Guidelines—and Water Quality Standards determined by the U.S. Environmental Protection Agency (EPA) through notice-and-comment rulemakings. However, EPA also issues guidance documents—known as water quality *criteria*—that do not always solicit or receive public input that can have a significant influence on the requirements incorporated into NPDES permits.

Except in a small number of instances, NPDES permits are issued by states which have delegated authority from EPA to perform relevant administrative, permitting, and enforcement aspects of the program. State governments must meet rigorous requirements to be authorized to run permitting programs and must follow EPA regulations when issuing individual permits. The Electric Cooperatives of Arkansas are fortunate to have a positive relationship with the State of Arkansas when it comes to state-administered CWA permits.

Last Congress' H.R. 7023 would improve the NPDES permitting process. Specifically, the bill would require EPA to seek public comment on new or revised water quality criteria. This policy would increase stakeholder engagement and overall transparency in the CWA permitting process. It would also help ensure EPA policy can be informed by actual on-the-ground experiences and help ensure that unnecessarily burdensome water quality criteria do not impact a co-op's ability to comply with NPDES permits. Furthermore, H.R. 7023 would provide additional regulatory certainty by clarifying that holders of NPDES permits are only responsible under their permits for discharges of pollutants that are specifically identified by the federal or state agency during the permitting process.

WATERS OF THE UNITED STATES

Under the CWA, the EPA and the Corps have jurisdiction to regulate "navigable" waters, which are defined in the law as "the waters of the United States," or WOTUS. The statute does not specifically define WOTUS but instead grants EPA and the Corps the responsibility to develop a definition through rulemaking. The definition of WOTUS under the CWA is significant because it determines which bodies of water are protected under the CWA, and therefore, whether certain activities that co-ops engage in that impact waterways will require a CWA permit. Broader CWA jurisdiction would increase costs associated with co-op activities in marginal areas, including construction and maintenance of transmission and distribution corridors, stormwater control, and plant construction, operation, maintenance, and decommissioning.

In *Sackett v. EPA*, decided in May 2023, the U.S. Supreme Court provided regulated entities much needed clarity by narrowing the EPA and Corp's overly broad interpretation of WOTUS under the CWA. Unfortunately, the Biden Administration EPA and Corps did not faithfully comply with or implement the *Sackett* decision in issuing a revised WOTUS regulation or determining which waterbodies require a CWA permit. For example, they have issued "Field Memos"—essentially, guidance documents to Corps staff in the field on how to interpret the WOTUS regulation—with overly broad interpretations of key terms which do not accurately reflect *Sackett*. This refusal to comply with the Supreme Court's decision has created uncertainty, litigation, and delays which are directly hurting co-ops and other businesses.

Now is the time to correct the failure of the previous Administration and provide the regulatory clarity that electric co-ops and other businesses need.

CONCLUSION

As the electricity demands of our nation continue to grow, electric co-ops are committed to meeting increasing demand while continuing to provide reliable and affordable electricity to their consumer-members and promoting clean water within the communities they serve.

Permitting programs under the CWA directly impact electric co-op's ability to invest in and build critical infrastructure needed to meet growing demand. Electric co-ops support efforts to streamline CWA permitting programs and look forward to working with members of the Committee to advance policies that will result in a more reasonable and efficient CWA permitting process.

I thank the Subcommittee for its important work on this issue and look forward to answering your questions.

Mr. COLLINS. We are going to move on to Member questions now, and the Chair now recognizes Mr. Crawford for 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman, I appreciate that.

Mr. Hasten, wonderful to see you, a fellow Arkansan here today. I appreciate you being here.

The Arkansas Electric Cooperative powers a huge part of my district, as you know. Of the 17 co-ops in Arkansas, I think that 10 of them are responsible in some capacity throughout my district for delivering power to constituents that I represent.

So, it is incredibly important for my constituents to know that their Federal Government is working with their member-owned electricity provider.

In your testimony, you mentioned that projects funded through USDA's Rural Utilities Service loan program, to go through the NEPA process. Should the project also require a Corps of Engineers' section 404 permit as well, the Corps requires duplicative paperwork and studies to be done. A NEPA and a 404 environmental review for the same project seems to me the height of bureaucratic waste.

In your experience in Arkansas, can you estimate how much time, money, staff hours, et cetera, lost productivity, could have been avoided, or saved, had the Corps and USDA worked together on this instead of working separately?

Mr. HASTEN. Well, Congressman Crawford, welcome from Arkansas. Yes, what we see is different agencies interpret NEPA differently. So I think that, to us, is a challenge.

When you have got RUS on one side, Army Corps of Engineers, Department of Energy, Fish and Wildlife, each have the purview to interpret NEPA how they want, and then so that gives us uncertainty as to what exactly we are going to be exposed to.

When you get down into section 404—and maybe an example would be, we know a project is going to need a section 404 Clean Water Act permit. We are going to intend to fund it with RUS, and so we work a lot with RUS so we know those requirements.

And those may trigger the right reviews with their interpretation of NEPA, and so we would go do a cultural survey or endangered species review or a wetlands review. And we complete all those, and they go through a process.

For instance, with a cultural survey review, we would turn that in to the State Historical Preservation Office, the SHPO. That goes through a process, let's say, 60 days.

They would then share that with the Tribes, and so they—I think they have got maybe 60 days to respond. As you can see, you have got months that build up. You are going through a proper process.

Well, once we then get where we need to and we turn that in to the Corps, they will turn right around and take that same exact

application and run it through the exact same process. So we got to go back to the SHPO, got to go back to the Tribes, and so you can just see it is a redundancy that is built in.

Mr. CRAWFORD. Right.

Mr. HASTEN. So right there you can say, well, that added 2 to 4 months——

Mr. CRAWFORD [interposing]. Sure.

Mr. HASTEN [continuing]. Just right there.

Mr. CRAWFORD. So, we have addressed this to some extent. We codified some aspects through the One Federal Decision, fees in the Fiscal Responsibility Act, but was it enough? Do we need to do more?

Mr. HASTEN. I think the more that can be done, in any business, to streamline and make processes efficient so there is not wasted time, I would say yes.

Mr. CRAWFORD. Okay. I appreciate that.

Mr. Hanners, I am going to shift gears real quick. I am glad to see that you are here today. Nucor is a big presence in my district. Arkansans know firsthand your company's commitment to environmental responsibility and how you can co-exist with economic productivity.

In fact, your entire business model is based on sustainability. I want you to talk about that a little bit, some of the ways American steel manufacturing can be advanced through commonsense environmental reforms and what effects that would have on economic developments in communities like mine?

Mr. HANNERS. Thank you for the question, Mr. Crawford, and your support, and, yes, thank you for giving me the opportunity to talk about sustainability in Nucor.

So if you look at our process, we are the cleanest steelmakers in the world, and we are continually striving to innovate while benefiting society both economically but then also achieving higher and higher levels of sustainability performance.

So I come here with a lot of pride in the way our team thinks about caring for the environment. At the same time, building a project like our West Virginia mill that will employ hundreds of Americans, but also thousands of contractors who come on site and then untold numbers of people who are impacted by that project in the region.

So if you think about our West Virginia mill, we are building a mill that will be the cleanest steel production in the United States, and it will employ hundreds, and by second and third order, impact thousands of Americans in that West Virginia region.

So we are very proud of that legacy.

Mr. CRAWFORD. I appreciate you. Thanks for being here.

I yield back.

Mr. COLLINS. Thank you.

The Chair now recognizes Ms. Scholten for 5 minutes.

Ms. SCHOLTEN. Thank you, Mr. Chairman, and thank you to all of our incredible witnesses for taking your time to be here today.

As I stated in my opening remarks, water issues are not, and should not be, a partisan issue. I hope I am not alone in saying that I am deeply concerned with the President's efforts to freeze

critical Federal funds, including dollars necessary to support our Federal water infrastructure.

We all can agree that regulatory reform is needed, clarity is needed, but what has happened in the last 10, 20 days has been the opposite of clarity. It has increased chaos and confusion.

This uncertainty could stifle all of the progress that this committee, and Congress as a whole, has made through historic legislation like the Bipartisan Infrastructure Law.

Stoking this kind of chaos will result in very tangible threats to every single community that is represented here at the dais.

Commissioner LaTourette, can you speak a little bit to how some of the directly blocked funds, as well as the uncertainty in Federal funding, is not only going to harm water infrastructure projects, but also prevent local and State governments from looking ahead to fulfill their communities' water needs?

Mr. LATOURETTE. I appreciate this question. My pause is because I am thinking. I am thinking hard about it. I mentioned in my testimony that we have a $1.2 trillion need nationally over the next 20 years for drinking water infrastructure; $31.6 billion of that is in New Jersey alone.

And we rely, the States, which are the ones that implement the investments in our infrastructure. State governments do that, not the Federal Government.

And what we see in New Jersey is an opportunity, using those Federal funds, we couple them with State funds, and then we use the governmental funds together to then leverage private market funds, so that we are able to create a capital stack for investment in water infrastructure that needs to be planned out over the course of many years.

And so we have projects that are in the queue right now that are phased, meaning that one fiscal year, you might do a pump station, and the next year, a main, right? And so when there is a disruption in Federal funding, or even just the uncertainty that is created by a suspected disruption, and even a temporary one, it reverberates throughout the system.

What I mean by that is right now, our State is in the process of formulating our clean water intended use plan for the next fiscal year, which for us starts July 1, and that provides water utilities, contractors, and others with guidance about how they should be sequencing their projects, such that a disruption in the Federal funding source, upon which all of that investment is built, has a cascading effect that can lead to the delay certainly, but potentially even the abandonment of a project, right?

And here we are talking about water that every business, every person needs.

Ms. SCHOLTEN. Certainly critical in Michigan's Third Congressional District. I firmly believe that the U.S. can have both a healthy economy and a healthy environment.

In fact, through the Great Lakes region, I would argue that these two outcomes are wholly interconnected, as I discussed in my opening remarks.

Commissioner LaTourette, again, I know New Jersey is a little different from west Michigan's shoreline, but can you speak to how water pollution can negatively impact communities' economies with

potential harm to the tourism industry, property values, and commercial operations?

Mr. LATOURETTE. Appreciate that question as well, Congresswoman.

So, tourism in particular is a huge driver of New Jersey's economy, right? Our pristine beaches, our quaint shore towns bring in $50 billion a year in tourism spending.

And all of that spending, all of that tourism, is dependent upon one thing: clean waterways.

I grew up in the 1980s at a time when our parents didn't let us go to the beach in New Jersey because of high levels of pollution. And today the Jersey Shore has the best water quality that we have ever seen, and that is a function of implementation of the Clean Water Act as a matter of permitting enforcement, but also because of that investment paradigm, which, since the beginning of our clean water investment strategy, has created 170,000 one-year direct construction jobs, right?

And so, not only is the Clean Water Act a necessity in terms of the health of our waterways, the health of our people, but it promotes the very businesses that dot our shoreline.

So, imagine those businesses that dot the shoreline, that rely on the influx of tourism dollars, imagine their struggles when they have to close a beach because of bad water quality, and nobody visits, and nobody spends.

Ms. SCHOLTEN. Thank you. I yield back.

Mr. COLLINS. The Chair now recognizes Mr. Fong for 5 minutes.

Mr. FONG. Thank you, Mr. Chairman, for calling this hearing, and thank you for the witnesses for their input.

Mr. Singletary, I wanted to ask you a few questions. I am glad that you highlighted the need to clarify the section 401 certification process. I wanted to get your input in regards to this specific area.

In California, it feels like we are constantly having to fight against our State Water Resources Control Board, which has used its authority provided under the Clean Water Act, along with other State and Federal environmental laws, to delay efforts to develop new water projects and actually undermine our ability to utilize the infrastructure we have.

The result is less water delivered to our farms and communities in my district, less clean and renewable hydropower generated for our grid, and less water security for everyone who lives in our State.

There are numerous examples of less water security, and there are examples of the State Water Board issuing draft Clean Water Act 401 certifications aimed at implementing a plan that calls for the flushing of billions of gallons of water out into the Pacific, rather than storing it to mitigate drought impacts during dry years.

Much of the time, the requirements and these regulations have nothing to do with water quality or even the operation of the projects they are regulating.

And I have statements from the Modesto, Turlock, and Merced irrigation districts which neighbor my district, that provide two very recent examples that paint the picture of what is happening all over California, and I ask those to be included in the record.

[The information follows:]

Statement of Modesto Irrigation District and Turlock Irrigation District, Submitted for the Record by Hon. Vince Fong

We appreciate the Subcommittee holding a hearing to discuss how the Clean Water Act (CWA) impacts the development and continued operation of our critical infrastructure. As you examine this important issue, we urge you to consider and address how the CWA, and section 401 in particular, is slowing down other vital national infrastructure, such as the ability to license and relicense hydropower facilities through Federal Energy Regulatory Commission (FERC). Modesto Irrigation District and Turlock Irrigation District (collectively "the Districts") own and operate the FERC licensed Don Pedro Project and the as-yet unlicensed La Grange Project (the Projects), which together generate over 200 MW of hydroelectric energy, and appreciate your consideration of our experience with Section 401 implementation in our 14-year effort to relicense the Projects. Ultimately, the CWA is a significant driver of the cost, uncertainty, and long duration of the FERC relicensing process, and if it is not addressed, it has the potential to disrupt, restrict, or even prevent the generation of affordable, reliable, and emission free electricity that is critical to the grid.

The Don Pedro Project is a federally licensed hydroelectric generating facility located on the Tuolumne River in the Sierra Nevada foothills approximately 130 miles east of San Francisco. As a multi-purpose project, the Project provides over 2 million acre-feet of water storage for irrigation and domestic use, critical flood control, and renewable energy. Don Pedro Project operations also benefit fish, wildlife, and recreation resources. The Districts also applied to FERC for a license for the La Grange Project, which generates about 5 MW of hydroelectric energy, and serves as a diversion dam to provide irrigation and municipal water supplies to the Districts' customers.

FERC issued the original 50-year license for the Don Pedro Project in 1966. Consistent with FERC regulations, the Districts began the relicensing process in 2011. Since then, at the cost of over $30 million dollars, the Districts have conducted over 30 scientific studies of everything from aesthetics to fishery resources, held dozens of public meetings and workshops, and developed state of the art flow, temperature, reservoir operation and fish models that work together to evaluate the efficacy and impacts of various license conditions. In 2021, based on that huge body of Tuolumne-specific scientific studies, FERC issued its Final Environmental Impact Statement (FEIS) as required by the National Environmental Policy Act and a suite of proposed conditions for the new Project license. At this point, FERC was ready to issue the new license but could not until the Districts obtained a CWA section 401 certification from the California State Water Resources Control Board (SWB).

Although the SWB is required to issue a CWA 401 certification within one year of receiving an application, the Districts filed three applications, none of which resulted in a CWA section 401 certification. Despite informing the Districts that the applications were complete, the SWB denied the first two (filed in 2018 and 2019, respectively) without prejudice to give themselves more time, forcing the Districts to refile the identical application. Then, in 2021, the SWB purported to issue a CWA section 401 certification even though the Districts had not applied for one. This certification, which was unilaterally withdrawn by the SWB in 2024, included 45 conditions, many of which were individually onerous, expensive and unduly restrictive, and collectively would have placed the daily operations of the Project subject to the control and oversight of the SWB. These conditions required the release of large volumes of water for downstream environmental purposes which were magnitudes greater than recommended by FERC in its FEIS. These conditions would also prevent the diversion of water when a federal facility located in a completely separate watershed was making releases required by its water right permits, reduce the releases of water from the Project for irrigation, domestic, and hydroelectric generation in order to maintain storage levels for later environmental use, dictate the process, methods and means for nearby road construction, and guarantee compliance at locations that are dozens of miles from the Projects' point-source discharges—beyond FERC's regulatory jurisdiction and so far downstream that the Districts are incapable of meaningfully controlling flows to meet the conditions.

Section 401 of the CWA provides the States with the vital opportunity to make sure that any federally licensed discharge complies with its applicable water quality requirements, which in California are rarely reviewed and approved in their entirety by the Federal Environmental Protection Agency (EPA), as required by law. California has abused and expanded this opportunity, using it not as the opportunity to ensure that any federally authorized discharge complies with applicable

water quality, but rather as an opportunity to seize control and oversight of the Project as a whole to achieve policy goals that are often only tangentially related to water quality and which have nothing to do with the licensed activity itself—the generation of hydroelectric power. Further, States have regularly failed to issue the required certification within the statutorily mandated 1-year timeframe, unilaterally requiring the licensees to refile the applications and delaying the issuance of a final license from FERC, all at an immense cost to local rate payers.

We appreciate the Subcommittee's attention to this issue and are happy to answer any questions or provide any additional information.

Statement of John Sweigard, General Manager, Merced Irrigation District, Submitted for the Record by Hon. Vince Fong

Dear Chairman Collins and members of the Subcommittee:

I appreciate the opportunity to submit this testimony. The issue of Clean Water Act permitting could not be more dire for Merced Irrigation District (MID) and the community we serve in rural Merced, California at this moment.

Without federal intervention related to a Clean Water Act 401 Water Quality Control Certification issue MID is now facing, all signs point to the California State Water Resources Control Board subverting our current federal hydropower relicensing effort with FERC, resulting in a complete takeover of water operations of our locally owned and operated reservoir, resulting in dire consequences for our community.

BACKGROUND

The Merced Irrigation District is a California Public Agency under the California Irrigation District Law. MID was established in 1919. It owns, operates and maintains the New Exchequer Dam and Reservoir (Lake McClure) and McSwain Dam and Reservoir (Lake McSwain) on the Merced River. They are located in the western foothills of the Sierra Nevada mountain range, approximately 23 miles northeast of the City of Merced.

Lake McClure has a storage capacity of 1,024,600 acre-feet, while Lake McSwain has a storage capacity of 9,730 acre-feet and is operated principally as a regulating reservoir for MID's hydroelectric generation facilities at New Exchequer Dam (Federal Energy Regulatory Commission Project No. 2179).

The water managed by MID flows west from Lakes McClure and McSwain through the New Exchequer Dam hydroelectric plant creating more than 100 megawatts of clean, renewable energy. The water then continues down the Merced River through more than 700 miles of canals for irrigation use by more than 2,200 Merced County growers.

The water supplied by New Exchequer Dam and Lake McClure supports thousands of jobs and is associated with $1.5 billion in economic output in an otherwise economically disadvantaged community. The majority of those served by MID's water are small generational family farmers, with the average farm size being fewer than 50 acres.

Additionally, MID's operations provide:

- 140,000 acre feet of local groundwater recharge, sustaining local drinking water quality for roughly 150,000 people
- Flood protection for 15 different communities, representing 169,000 people, for 130 miles
- Flows down the Merced River during droughts
- Cold-water releases down the Merced River during critical time periods
- On-demand voltage regulation for the statewide electric grid

AT STAKE: LOCAL CONTROL OF OUR RESERVOIR

In 2005, MID began preliminary work on a new license through the Federal Energy Regulatory Commission (FERC). In 2008, MID issued its Notice of Intent to Relicense and Preliminary Application Document. This began numerous costly studies analyzing the impacts of the project. Based on these studies and multiple years of collaboration with federal and state agencies, in 2012 a final application was filed with FERC. In 2015, FERC issued a final Environmental Impact Statement (FEIS).

The FEIS dictated several conditions and studies to be conducted under the new license for New Exchequer Dam, including new increased flow releases downstream of the reservoir. The federal relicensing process represents a $36 million investment

paid completely by the local community that depends on Lake McClure for its water supply, economy, and way of life.

As part of the FERC relicensing process, MID is required to obtain a Clean Water Act (CWA) 401 Water Quality Control Certificate from the Environmental Protection Agency. Implementation of the CWA varies from state to state; in California, that authority has been delegated to the State Water Resources Control Board.

At the same time MID has been pursuing a new FERC license, California's State Water Resources Control Board has sought to update its Bay Delta Water Quality Control Plan for the Sacramento-San Joaquin River Delta which the Merced River ultimately flows into.

In summary, the Bay Delta plan calls for an unimpaired—and adaptable—flow regime from Lake McClure and other local reservoirs. The resulting new flows would be sent downstream nearly 200 miles for the purported benefit of water quality in the Sacramento-San Joaquin Bay Delta.

The effects of the Bay Delta Plan flow diversions would have a devastating impact on our agricultural water supply, domestic food production, local employment and economic activity as well as local drinking water quality.

Further compounding these negative impacts would be reduced hydroelectric production that is crucial for our regional and national electric grid support and reliability. The issue of the Bay Delta Plan has been contentious and the subject of multiple past and present lawsuits by MID and many other local irrigation districts.

More than a decade ago, the State Water Resources Control Board had stated on its website that it intended to use its CWA 401 certification authorities to implement the Bay Delta Water Quality Control Plan. When asked about this during a public meeting in Merced, California, at the time the chair of the Board said that would not be the case. Yet here we are and that's exactly what has happened.

Which brings us to today.

In January of 2025, the State Water Resources Control Board issued its draft CWA 401 certification for the federal hydropower relicensing process. It spans more than 100 pages and in no uncertain terms, directly implements its Bay Delta Water Quality Control Plan.

In addition to attempting to implement its plan through the CWA 401 certification process, the State Water Resources Control Board included many other onerous requirements that result in effectively removing authority from FERC and operational management of the reservoir from MID.

Among the most problematic conditions placed on the operations of the Merced River Hydroelectric Project by the State Water Resources Control Board through the CWA 401 certificate:

- Decisions about water management and releases from Lake McClure would, in part, be recommended by three separate committees, rather than MID's knowledgeable engineers and managers who have safely and efficiently managed the reservoir for decades. The ultimate decision about management of the water supply would rest solely and exclusively with the Executive Director of the State Water Resources Control Board, an unelected career bureaucrat.
- MID would be responsible for maintaining flows all the way to the confluence of the San Joaquin River, nearly 30 miles downstream of MID's last point of control on the river. That stretch of river has dozens of water users which are not part of MID and exist outside its jurisdiction.
- The minimum year-end carryover storage in our reservoir proposed by FERC in its FEIS is rendered meaningless. As proposed in the CWA 401 certificate, the Deputy Director of the State Water Resources Control Board, another unelected career bureaucrat, would annually make that carryover determination regardless of consequences to MID.
- Perhaps most egregious, at any time, these two career bureaucrats can modify the flow schedule—and carryover storage—anytime they want with no accountability to anyone, creating total uncertainty about water supply for MID's agricultural water users and hydroelectric operations.

Without immediate federal intervention, the State Water Resources Control Board will steal a local water project and leave the local community holding the empty reservoir.

MID will find itself burdened with:

- All the on-going operations costs of maintaining the lake and dam facilities for flood control and dam safety
- Inadequate water supplies for critical domestic food production
- Severely reduced hydroelectric production to fund these operations

- The loss of hundreds of millions of dollars in economic activity and thousands of jobs in one of the most economically disadvantaged communities in the state.

Thank you for your time and consideration. We look forward to working with you and the Subcommittee to resolve this urgent matter immediately.

Mr. FONG. If I could ask you, what advice do you have for making sure that States are accountable to the spirit of the Clean Water Act when implementing these delegated authorities?

Mr. SINGLETARY. Thank you, Congressman, for the question. I think that—I mean, it has kind of been a back-and-forth over the years. Different States have utilized that 401 certification in different ways.

Sometimes it is used or weaponized against a specific project, and how we use it in Oklahoma, we use it specifically, again, to protect water quality resources within the State, and we don't expand it beyond that.

I think if there was some language in the Clean Water Act that specified that it was to be focused solely on water quality projects, discharges, water quality standards, those type of things, list out specifically what those 401 certifications can be used for, that would probably limit some of the ability to take it beyond those water quality impacts that we feel that it is intended to cover.

Mr. FONG. Do you have, like, specific recommendations that maybe delve a little deeper in terms of, I mean, how does it work in Oklahoma? And then when you talk to other States, what guardrails would you want to put in?

Mr. SINGLETARY. You are talking about specific language?

Mr. FONG. Yes.

Mr. SINGLETARY. I don't have any specific language, but I can propose some for you and get it to you.

Mr. FONG. I mean, do you believe that the Biden administration's 2023 rule regarding 401 certifications, do you believe that it expanded the extent of 401 review beyond congressional intent?

Mr. SINGLETARY. We do. We believe that there is the potential for that to be misapplied and go beyond impacts that are clearly associated with a proposed project and taken to other downstream activities that may occur as a result of a project but maybe aren't specifically related to that project. We think that potential is definitely there.

Mr. FONG. And in your testimony, you mentioned concerns about third parties, potentially seeking to force States to address broader concerns outside the scope of the Clean Water Act if the current section 401 rule is left intact. Can you expound upon that, like, give some specific examples?

Mr. SINGLETARY. Sure. I mean, there is the potential, if that broader application is allowed, or broader scope of review is permitted—that even though in Oklahoma we want to tie those reviews, our 401 certification review, to specific water quality impacts coming from a proposed project—some third party who may have an interest in stopping that project could try and utilize our 401 review. Any decisions we make, that is going to be subject to an appeal. So they could take us to court and try and force us to take that review further than how we believe it is intended.

Mr. FONG. Well, I certainly appreciate your testimony. I think the section 401 certification has been weaponized and to prevent needed water storage projects and energy projects. We need to find that balance.

I look forward to working with you and the members of the committee to clarify the 401 projects and streamline it as much as we can. Thank you.

Mr. Chair, I yield back.

Mr. COLLINS. The Chair now recognizes the ranking member, Mr. Larsen, for 5 minutes.

Mr. LARSEN OF WASHINGTON. Thank you, Mr. Chair.

Mr. Hanners, I have a bit of a curveball for you because—sorry about this—we have a Nucor facility in Seattle as well. I don't know if that fits under sheet products or not, but I did note yesterday Nucor said effective new orders received after close of business on February 10th, the Nucor Bar Group will increase prices by $40 per ton on all rebar products.

It may not impact sheet products, but it seems unusual—or no—coincidental that the day the President announced 25 percent tariffs on aluminum steel products coming to the United States that Nucor is announcing an increase on rebar products, and I am wondering if you know, in fact, if there is a relationship between the call for a 25-percent tariff on aluminum and steel imports in the United States and this price increase?

Mr. HANNERS. So to answer the first part of your question, Congressman Larsen, rebar products does not fall under my group sheet products.

Mr. LARSEN OF WASHINGTON. Mr. Spicer has rebar products?

Mr. HANNERS. That is right—Mr. Spicer. So you know Randy. It is a better question for him, but I will answer it at a high level in that we are very supportive of the actions taken by the President to impose tariffs on all steel products. And we believe that there is a strong tie to national security——

Mr. LARSEN OF WASHINGTON [interrupting]. Okay. I am sorry. It sounds like you memorized something or are reading it. I am just wondering, is there a relationship between these price increases and the tariffs?

Mr. HANNERS. I can't comment on that in rebar.

Mr. LARSEN OF WASHINGTON. Okay.

Mr. HANNERS. I can't.

Mr. LARSEN OF WASHINGTON. All right.

Mr. HANNERS. There are a lot of unfairly dumped and traded imports that come into the country that are rebar——

Mr. LARSEN OF WASHINGTON [interposing]. Yes.

Mr. HANNERS [continuing]. But I can't comment on the direct relationship——

Mr. LARSEN OF WASHINGTON [interrupting]. Great. Thanks a lot.

Is there a similar price increase coming for sheet products?

Mr. HANNERS. Can't comment on that either. I mean, pricing has been increasing already. If you look at trends, sheet pricing has been at a low point for the last quarter before any tariff action. So I think that there are other demand drivers that may contribute to prices moving up.

Mr. LARSEN OF WASHINGTON. Fair enough. Thank you. I appreciate that very much.

Mr. Singletary, in Oklahoma, as in my State, certainly in New Jersey, I am sure, we have local governments, water districts, using the State Revolving Fund money for infrastructure improvements. I alluded to this in my opening statement.

Are you right now aware of any pause on that money? Are you seeing impacts or hearing from your local water districts or even sewer districts or other municipalities on whether or not that money is available or they are having to wait at all?

Mr. SINGLETARY. No. In fact, I have confirmed that it is, the money is flowing currently.

Mr. LARSEN OF WASHINGTON. Okay. As recently as when?

Mr. SINGLETARY. I am sorry?

Mr. LARSEN OF WASHINGTON. As recently as when?

Mr. SINGLETARY. As recently as last week, beginning of the last week.

Mr. LARSEN OF WASHINGTON. All right. That is good. A lot of other money has been paused, and so we are—we approved this money—Congress did—approve this money. There was a pause, there was a startup for some, not for others.

Mr. SINGLETARY. Yes.

Mr. LARSEN OF WASHINGTON. And we are not getting really clear messages at all from the current administration on what is moving forward and what isn't. So I do appreciate that.

Do you want more of it?

Mr. SINGLETARY. Of course.

Mr. LARSEN OF WASHINGTON. All right. Probably the most important question and answer we can get from anybody. I appreciate that very much.

And then Mr. LaTourette, I want to ask you about forever chemicals, and what's been your experience in controlling the discharge of PFAS and PFOA in New Jersey?

Mr. LATOURETTE. So, New Jersey has been at the tip of the spear on PFAS issues dating back to 2006. We did some of the first occurrence studies. And we have a prolific PFAS contamination problem in the State of New Jersey, in part because of the manufacturing centers, particularly in the southern part of the State.

But we first set standards to control for PFAS contamination in drinking water back in 2020, and we put those standards in place before the Federal Government had acted.

Those standards are now applied to drinking water systems. There are over 100 drinking water systems in the State of New Jersey that have impacts from PFAS chemicals, meaning, to the point I had made earlier of, if we are not careful about our discharges into waterways and if we are not regulating them and enforcing that regulation, inevitably, that enters into the water cycle.

That which enters into the water cycle ends up coming into our drinking water systems, and we must put treatment on it to remove it.

Mr. LARSEN OF WASHINGTON. All right.

Mr. LATOURETTE. Huge cost.

Mr. LARSEN OF WASHINGTON. And, quickly, are you hearing from any New Jersey water systems or sewer systems about State Revolving Fund money being paused at all? What is your experience?

Mr. LATOURETTE. The way that our intended-use plans and our——

Mr. LARSEN OF WASHINGTON [interposing]. All right.

Mr. LATOURETTE [continuing]. Our—function——

Mr. LARSEN OF WASHINGTON [interrupting]. Can you give me a yes or a no? Or get back to me.

Mr. LATOURETTE. Not at this very moment, no.

Mr. LARSEN OF WASHINGTON. Got it. I will get back—okay. Thank you.

Mr. COLLINS. The Chair now recognizes Mr. Hurd for 5 minutes.

Mr. HURD OF COLORADO. Thank you, Mr. Chair.

Good morning to our witnesses.

Mr. Hasten—am I pronouncing that right?

Mr. HASTEN. Yes, sir.

Mr. HURD OF COLORADO. I want to get that right.

I represent Colorado's Third Congressional District, which covers about half of the landmass of the State, and rural electric cooperatives are vital to my district, just as they are to much of rural America.

When it comes to the distribution cooperatives that actually deliver power to rural America, whether in Arkansas, your home State, or in Colorado, my home State, who owns those distribution cooperatives?

Mr. HASTEN. The cooperative business model, the members—we call them member consumers—they are ultimately the owners of the cooperative.

All the—as a CEO, I am charged with running the company; I report to a board. The board of directors comes from these local communities that serve these co-ops. And so the board of directors comes from the community. I report to that board. And, through that, we run the cooperative.

But, ultimately, we look at the business model as: All of this exists to serve our members in a cooperative fashion.

Mr. HURD OF COLORADO. Just to be specific, so the members at the distribution cooperative, those are families? Those are small businesses? Those are ranchers? Is that correct? They are the owners of those distribution cooperatives?

Mr. HASTEN. Yes. Yes. All of the members of that community that we serve, yes.

Mr. HURD OF COLORADO. Your testimony mentions the cost of complying with Federal permitting programs, like section 404 permits, Endangered Species Act, particularly the costs of delay.

When it comes to those costs of delay, who pays for that?

Mr. HASTEN. In a co-op?

Mr. HURD OF COLORADO. Yes, sir.

Mr. HASTEN. Every cost I get ultimately gets passed directly on to those members, the members of the community that we serve. So it is a passthrough. So any cost that comes to us, we are going to pass it right back on to the community that we serve.

Mr. HURD OF COLORADO. So those get paid—those additional costs get paid by the farmers, the small-business owners, the families that are served by that cooperative?

Mr. HASTEN. Yes, in the form of, we will set electric rates to cover the cost of service, so any costs that we incur go into how much we have to charge for rates. So, yes, indirectly, through their electric rates, they will pay for any costs that are incurred in making the power and getting it to them.

Mr. HURD OF COLORADO. Mr. Hasten, would it be fair to say that these permitting delays effectively act as a hidden tax on rural America?

Mr. HASTEN. Yes.

Mr. HURD OF COLORADO. Thank you very much.

Mr. Chairman, I yield back.

Mr. COLLINS. The Chair now recognizes Mr. Garamendi for 5 minutes.

Mr. GARAMENDI. Thank you, Mr. Chairman. It is a pleasure to be with you in your first hearing. And, my, you have certainly stepped into the big issue right at the outset. Thank you for doing so.

I think I will go to a piece of legislation that is bipartisan in this House, that we have been working on for several years, and it is NPDES.

And, specifically, Mr. Singletary, you raised this issue early on, that the permit is presently a 5-year permit for municipal districts, sanitation districts. That gives them just about enough time to figure out what they are going to do, and then they have to go get a new permit, which means they go back through the whole cycle again.

The legislation we have been talking about is a 10-year permit period. Please comment on this. You raised the issue early on.

Mr. SINGLETARY. Certainly.

Just recognize all the effort it takes to submit an application, go through that permitting process, allowing the State to expand the terms of those permits—you would still have the same environmental protection. States have the authority to address any issues, unforeseen issues, that come up. But it would provide some certainty for the regulated entities. They would have it for that longer period.

And it would, like I said, essentially cut that whole permitting process in half. Over that 10-year period, you are only having to do it once instead of every 5 years. Because, like you said, by the time you get a permit issued, we are very close to—it is not very much longer that you have to start that process all over again and start planning for the next one.

Mr. GARAMENDI. You did raise a piece of the concern, and that is, in that intervening 10-year period, there could very well be some extraordinary event, unknown, unforeseen, that might cause—or, should cause new review.

I think you talked about that briefly or skipped right over it. Could you get to that in a little more detail?

Mr. SINGLETARY. Certainly, Congressman.

If there was an issue that is discovered, we still have the ability to address that through our implementation and enforcement proc-

ess, but we can also trigger additional review. And we can—actually, there are provisions that allow us to require that permit to be amended to address those concerns if something is discovered.

Mr. GARAMENDI. I raise this—we are going to reintroduce this bipartisan bill in the next few weeks, and I draw the attention of the committee and the new chair to it. I think it would be one of the ways in which we can expedite the permitting—or, reduce the amount of permitting that is required.

So I will let it go at that.

There are other issues. I suppose I ought to pound away on the impoundment issues that are out there.

Do any of you have specific examples of the way in which the current Trump impoundment of funds is affecting your district?

Mr. Singletary? I will go on down. Maybe Mr. Hanners, I don't know. Mr. Hasten surely.

Mr. SINGLETARY. I am sorry. Impoundment?

Mr. GARAMENDI. This is the current impoundment of the Federal funding.

Mr. SINGLETARY. Oh, the funding.

Mr. GARAMENDI. Yes, sir.

Mr. SINGLETARY. I think we in Oklahoma recognize the current administration's—that they see a benefit in reviewing these funds. We hope that review goes quickly.

We do think that the projects that come through us, they are so critically important, whether it is wastewater or public water supply projects, that they are going to survive any review that occurs. We think they are that essential to Oklahoma and, obviously, the country.

Mr. GARAMENDI. Well, we have heard from Mr. Hanners that delays cost money. So you are seeing delays in Oklahoma on projects?

Mr. SINGLETARY. We are not seeing any delays at this point.

Mr. GARAMENDI. Could there be delays if this impoundment continues?

Mr. SINGLETARY. Well, right now, the funding—the money is continuing to be released. We have reached out to EPA, who kind of controls the purse strings for us, and they let us know that all the funding sources that we are involved in, that that money is still flowing to those projects.

Mr. GARAMENDI. Mr. LaTourette, examples in New Jersey?

Mr. LATOURETTE. So we saw some immediate implications from the funding freeze a couple weeks ago, so much so that New Jersey took legal action in a court case with other States. And that judge returned a decision that the funds could not be frozen.

They continued to be frozen, and the court had to issue another order just yesterday reminding the President of complying with the law.

Mr. GARAMENDI. Mr. Hasten, examples from your State?

Mr. HASTEN. I don't have any examples where it has cost us any delay.

Mr. GARAMENDI. So we have a red State and a blue State different. Interesting. Maybe there is targeted impoundment.

I am going to let it go. I am going to yield back my 2 seconds.

Thank you, Mr. Chairman.

Mr. COLLINS. Thank you.

The Chair recognizes Mr. Burlison for 5 minutes.

Mr. BURLISON. Thank you, Mr. Chairman. And it is good to see you up there. Congratulations.

Mr. Hanners, the Clean Water Act was enacted to restore the integrity of our Nation's waters. However, in recent years, it has been weaponized, mostly by environmental zealots with a political agenda that goes far beyond the primary purpose of protecting water.

Do you agree that the Clean Water Act has strayed from its original intent?

Mr. HANNERS. I can speak to what we have gone through at our West Virginia mill project. I appreciate the question, Congressman.

We started off with an understanding of the Corps of Engineers that we needed—a certain scope was going to be included in the permitting for this project. So, what happened in this situation—and we have encountered in other projects of this size and scope as we navigate the 404 process—is the scope that was initially explained to us and that we entered into changed dramatically as we got further into the project.

So, very frequently throughout the process, we have other entities that are involved in doing a study, whether that is on artifacts we may come across, whether that is on wetlands. And each of those different interfaces with the permit causes examples of—I can give you examples of very long delays related to each of those different directions of the permit. So, for our West Virginia project, for example, we incurred hundreds of millions of dollars in additional loss attributed to the extenuation of this permitting process.

So it is an example of us—we need certainty, stability, and consistency in the process. We know what to expect when we enter the process, and we understand that the process is going to be timely, and we understand how to navigate the process.

We are fully on board with navigating a process that both provides us the opportunity to get a project of that scope permitted and also protects the environment.

Mr. BURLISON. How would you like to see that? Would you prefer to have it streamlined so that all of those entities that might be affected are asking for that research to be done concurrently? Or what ideas are there to streamline that process?

Mr. HANNERS. The States know best about their water resources. And our interactions at the State level have been very good. They are responsive; they are knowledgeable. If there is a question about how to navigate something, we get a quick resolution on what steps we should take.

So we believe that we should get that process to the State level and also keep the States focused on their statutory duty to prioritize water quality as they navigate the process.

Mr. BURLISON. I know in my own State of Missouri, I would agree with you; our State, the Department of Natural Resources does a better job than the EPA.

However, our State and probably many States have an arrangement in place where they are required to enforce whatever the EPA has issued. So we had a lot of issues, for example, when it came to trichloroethylene being in our water supplies. There was a dis-

pute as to what was acceptable levels of this product, which I guess is diesel cleaning fluid, is basically what it is, or it is a byproduct of that.

So, what we determined was, when we tracked it down, there wasn't a law that was put into place, there was no one on the Federal level that changed anything, but an unelected official had issued a guidance document, and that subsequently caused the State of Missouri and, I am assuming, many other States to change regulations radically.

Do you see that happening in other States?

Mr. HANNERS. We do. We have experienced that with our West Virginia project, another one we executed recently in Brandenburg.

And listening to Mr. Hasten describe his project early on, we experienced a very similar challenge to what you just laid out as well and the process that he nailed down during his project description.

Mr. BURLISON. It would seem that we need to do something just universally up here to make a statement or put into the law that the Federal Government, unless it is an act of Congress or somebody who is elected making this decision—the force of an unelected official shouldn't carry the same weight. So I think that is something we ought to look into.

Thank you. My time has expired.

Mr. COLLINS. The Chair now recognizes Mrs. Sykes for 5 minutes.

Mrs. SYKES. Thank you to the chair and ranking member for holding this hearing today and kicking us off for the 119th Congress for the Water Resources and Environment Subcommittee.

I appreciate your leadership on this subcommittee and look forward to working with you both as we work to improve our Nation's water infrastructure and ensuring access to clean water for the people of Ohio's 13th Congressional District, where I have the honor of representing, and all across the United States of America.

The Clean Water Act exists for a reason.

On June 22, 1969, the Cuyahoga River caught on fire due to extreme pollution for the 13th time. This poster next to me shows, although in black and white, what it looked like in Cleveland as a river caught on fire. Imagine a body of water catching on fire.

And this image, which was taken of the fire in 1952, was published in a Time magazine article covering the 1969 fire that helped catalyze a movement to protect our waters and our planet, ultimately leading to the creation of Earth Day, which is on April 22nd, and in a movement around protecting water in a much more substantial and meaningful way.

You all know in this committee how much I love to brag on my district and particularly my home State of Ohio, and this is not something that we could brag about, but, thankfully, the bad news was not the last news for Ohio or for this country, because this movement also led to the creation of the Environmental Protection Agency and, after much bipartisan collaboration, the passage of the Clean Water Act in 1972.

I take some exception to some of the testimony I heard today about the Clean Water Act and enforcing it, because it has been very hard for Cleveland—I don't represent Cleveland—to shake off the misnomer "the mistake on the lake," and it has reverberated

for generations to come. So it is important that we protect water not just for this century, this generation, but futures to come so we don't see other mistakes on the lake or whatever you want to call it.

And so, now, the Cuyahoga River, which runs through my district, through the Cuyahoga Valley National Park—and it is one of the most visited national parks in the United States. It took 20 years and $3.5 billion in infrastructure investments to clean up the Cuyahoga River and to allow nature to return to its shores, something that we are still working on every single day.

This underscores what it costs when we don't protect our waters and the billions of dollars we can save by investing in clean water and water infrastructure before disasters strike. And so that is why I am such a proud supporter of the Bipartisan Infrastructure Law, which has authorized over $17 billion for communities nationwide to improve America's water infrastructure.

Now, one of the largest investments that we have received was in the city to Canton to modernize some of its water systems. But I do want to talk about the impact on the Federal freeze and this pause-and-review strategy, because this is significant. And I know we don't always like to talk about our history, but history will repeat itself if we continue to make the same mistakes.

And so, Mr. LaTourette, as a State leader who is tasked with protecting your waterways and the infrastructure, can you talk about what the Bipartisan Infrastructure Law has done for communities, mid- and small-size communities like Akron and Canton, where I represent, and how this freeze or the pause-and-review strategy is impacting the ability to keep our waterways clean?

Mr. LATOURETTE. Thank you, Congresswoman, for the question.

The Bipartisan Infrastructure Law, in the water space, brought about $1 billion over 5 years to the State of New Jersey. And I mentioned before that we have a need for water infrastructure investment that is nearly $32 billion over 20 years. And I make that comparison because, while the Bipartisan Infrastructure Law was historic in the size and scope of its investment in our infrastructure, it is nowhere near enough, and we have to continue making the investments.

We should fully federally fund the Clean Water State Revolving Fund to its maximum amount. Because what we are able to do in New Jersey when we have a greater amount of Federal funding and there is not the specter of risk that it will not be there for us when the next cycle of intended-use planning is right around the corner, what we are able to do with it is turn that $1 billion into $4 billion with the way that we leverage our State funds and the private funds we bring in. And that——

Mrs. SYKES [interrupting]. Mr. LaTourette, I am so sorry to cut you off, because I could sit and listen to you talk about the State Revolving Fund for hours, but I only have 2 seconds left and I want to make sure I make a point, that this poster is, again, indicative of what happens if we don't act.

I believe in permitting reform. We should and we can do better. But their next frontier is PFAS. And I have seen a lot of the testimony hitting against it and trying to keep us from ensuring that we are keeping our water safe. Let's not let this happen again. And

let's commit to working with one another to find appropriate permitting reform and ways to keep our waterways safe.

Thank you, Mr. Chair. I appreciate you giving me a couple extra moments, and I yield back.

Mr. COLLINS. The Chair now recognizes Mr. Onder for 5 minutes.

Dr. ONDER. Thank you, Mr. Chairman.

Mr. Hasten, in your testimony, you underscore the importance of rural electric co-ops in providing power, especially to rural areas, in your home State. And in Missouri, co-ops play a very vital role in our infrastructure and supplying power to those communities.

Can you describe how inefficient clean-water permitting adds to costs, which are already higher for rural electric consumers, than if the permitting process were more efficient and sensible?

Mr. HASTEN. Congressman, thank you for the question. And for 8 years, I made power in Missouri for their electric co-ops, so I am very familiar——

Dr. ONDER [interposing]. Yes.

Mr. HASTEN [continuing]. With the co-ops in your State.

Delays—if you have an expected sort of timeline, right—so the projects that we do, if I wanted to build a new powerplant today, even the simplest powerplant, a simple natural gas powerplant, it is a 5-year process.

Dr. ONDER. Right.

Mr. HASTEN. And so, we layer in all of the planning and all of the—when we need to put in for permits and when we need to invest in infrastructure.

Well, if you buy things, let's say very expensive capital infrastructure, and you have this expected timeline of when it goes into service——

Dr. ONDER [interposing]. Right.

Mr. HASTEN [continuing]. But then it doesn't—so imagine a $500 million powerplant that doesn't go online. Everything is sitting there, and you are gaining interest during construction, right?

Dr. ONDER. Right.

Mr. HASTEN. All of that is just adding to the cost. That thing is not creating any benefit. You are not putting power out to members or to supply load, generate revenue to make it a useful asset.

So it is on that scale——

Dr. ONDER [interrupting]. And that is a cost.

Mr. HASTEN [continuing]. That these delays just add cost.

Dr. ONDER. Right.

Mr. HASTEN. Not to mention staff hours, consultants, lawyers. Those are just administrative fees that add up.

And as the Congressman from Colorado had mentioned, every one of those, as a co-op, I am passing that right on to the people that I serve in my communities. They are paying for it. I am just the conduit.

Dr. ONDER. So, in your experience, dealing with the State of Arkansas on permitting, how does that compare with your experience dealing with the Federal Government: the EPA and the Army Corps of Engineers?

Mr. HASTEN. I would say that, for section 401 and section 402 permits, we are lucky in the State of Arkansas that the ADEQ, Ar-

kansas Department of Environmental Quality, is able to control those. They have been delegated that authority to do that.

Dr. ONDER. Yes.

Mr. HASTEN. My experience with them is outstanding.

Dr. ONDER. Good.

Mr. HASTEN. Yes, they are my regulator; yes, they tell me I have to do things that are like, "Oh, that's hard to do"——

Dr. ONDER [interposing]. Sure.

Mr. HASTEN [continuing]. But there is a partnership.

Dr. ONDER. Right.

Mr. HASTEN. So I am trying to serve the community, I am trying to serve economic development, I am trying to do that. They have their job to do, and—but you feel that sense of partnership. So, if they tell me it is going to be 60 days, I get it in 60 days. If they do it—sometimes they get it to me faster. So, a real partnership, good communication.

When we go to section 404 and we are working with Federal agencies, it is, I would say, generally poor communication or ignored communication or continual emails and calls from us to get anyone to answer the phone type of communication. And to say that it is a bit of the runaround, instead of partnering together to say, "Look, this is important. Clean water is important. We have these rules. How do we comply?"

Working with our Arkansas department—I would also say, I have worked with Oklahoma. Great. Worked with Missouri DNR; I have worked with Iowa DNR. I have had great experiences with all those State agencies.

Dr. ONDER. Good.

Mr. HASTEN. What you get at the Federal level, there is a certain sense of, "We are the law. We are the top. And what we say goes, no questions asked. And I don't really feel compelled to—I don't have to do this under a timeline other than what I want. And your project isn't really a timeline that means anything to me."

Dr. ONDER. Yes, you must at times wonder whether this is really the law that you are hearing about or the opinion of some unelected bureaucrat.

From your perspective, what would be the impact on electric co-ops if nationwide permitting were not reauthorized?

Mr. HASTEN. If it was not reauthorized?

Dr. ONDER. Not reauthorized.

Mr. HASTEN. It would be detrimental. Very detrimental.

I mean, there are a lot of things we do under nationwide permits, right? Transmission line maintenance, right-of-way clearing, recovering from storms.

Dr. ONDER. Sure.

Mr. HASTEN. So, if every single thing we did that needs to be in some way sort of time-sensitive, if it had to go through the full review—and some things need to go through that full review——

Dr. ONDER [interposing]. Right.

Mr. HASTEN [continuing]. But a lot of things do not. And if you got rid of those, it would be really damaging.

Dr. ONDER. Thank you.

I yield back.

Mr. COLLINS. The Chair now recognizes Ms. Friedman for 5 minutes.

Ms. FRIEDMAN. Thank you, Chair Collins and Vice Ranking Member Scholten.

I am very honored to be a member of this subcommittee. Water is hugely important in my area, in California and Los Angeles. I served on the Metropolitan Water District board of directors for 8 years and sat on the water committee in the California legislature. And I am really looking forward to working with all of you on water issues.

The health of our families and our economy and local water bodies and wetlands depends on robust investment in water infrastructure and strong water standards. And I have been very interested to hear today about the, sometimes, tension between environmental protections and economic development and moving projects forward.

And, certainly, everybody wants to make sure that any regulation that we have moves quickly, that entities that are looking for permitting in the regulated community have a process that is fair, that moves rapidly, and that makes sense.

But, at the same time, I do want to push back a little bit about some of the terms that I have heard, like "radical environmental activist." I don't think that it is radical for families to want to make sure that their children are not drinking PFAS, chromium-6, lead, and other harmful materials. It is certainly not radical for the people of Los Angeles to be very frustrated that when we have our droughts like we have every year, that we can't drink from the giant aquifer that is under Los Angeles because of historic pollution.

And I think that, also, those of us who want Government to be efficient really bristle at wasting billions of dollars every year cleaning up pollution—air pollution, water pollution, pollution of the ground—from industries that could have been prevented from causing this pollution in the first place through strong environmental protections and environmental regulations.

So it is not at all at odds for those of us who want efficiency and economic development to also demand strong regulation to prevent that kind of waste, to prevent the human cost and human health impacts from not regulating, which we have seen happen so far over the years.

Now, the recent Supreme Court ruling in *Sackett* v. *EPA* to exclude certain wetlands from the definition of "waters of the United States" pushes back decades-old regulation and makes fewer wetlands to be covered under the Clean Water Act since the 1970s. The ruling excluded ephemeral waters and intermittent waters, both of which are incredibly important to California because of the way our hydrology works. In fact, 90 percent of California's original wetlands have already been destroyed.

And the Trump administration stripped away environmental protections in their last administration, and there is every indication that they want to do so again. That would be harmful to our pocketbooks and certainly harmful to public health.

I was proud in the California legislature to have passed AB 2875, which codified the Executive order from Governor Pete Wilson to

establish a State policy of no net loss of wetlands and only long-term gain. And I am proud to say that that bill was bipartisan, that it was supported by Republicans and Democrats alike who recognized the importance of these resources.

Commissioner LaTourette, I want to thank you for being with us today. Can you just maybe briefly speak to the importance of the Clean Water Act and robust environmental protections to the State of New Jersey?

Mr. LATOURETTE. Thank you for the question.

I think we have to recognize that every single thing we do across our landscape, every single thing we build, how we operate our businesses, how we run the Government, always has an environmental externality. Everything has an environmental externality.

The question that I think we should be asking ourselves is, how do we reduce those externalities such that it is not a great cost to business? Because when those externalities are not addressed at the beginning, they become a cost, necessarily, to someone else: harming someone's health, diminishing our recreational and commercial fisheries, right?

Because the externality that is wrought by a lack of adequate pollution control on wastewater discharge has to be addressed somewhere else, because there is only one water, and it is all connected. And so, if we are not reducing our pollutant loadings to waterways, the public, the taxpayer, is going to be left holding the bag, such that that pollution is then remedied by a drinking water system, right, for example.

So we, I believe, have to look at this more holistically and not only as a cost center to any one particular regulated actor.

Ms. FRIEDMAN. Thank you very much.

I yield back.

Mr. COLLINS. The Chair now recognizes Mr. Westerman for 5 minutes.

Mr. WESTERMAN. Thank you, Chairman Collins.

And thank you to the witnesses for being here today.

And I am just going to keep rehashing something that has been talked about a lot. It is something I have—I am going to start with a story that I have talked about a lot that doesn't really deal with clean water, but it deals with a broken process.

I think, if my staff wants me to wake up in the morning, they give me a lot of coffee and they schedule meetings with people who are frustrated with our permitting process.

And, this morning, I had a—first meeting was with a county executive from back home in Arkansas, who was telling me about how long it took him to get a permit from the Corps of Engineers to build a bike trail, a little section of bike trail, and ended up having to go to Vicksburg from Little Rock even though there is a Little Rock District right there close by.

And then I had the pleasure of meeting with FHWA on a road project that—I am going to keep talking about this, if I live long enough and keep getting reelected, until they get the project finished. But we had a road washout—Forest Service road washout in 2020 and then another landslide on the road in 2022. And they have $6 million to study and fix the project. And the best date they could give me this morning was 2027.

So we are looking at 6 or 7 years to fix a 1-acre landslide on a gravel road in the national forest that is causing people to have to go 30 and 40 minutes out of the way to get to school, to get to the hospital. There is a concessionaire on the Forest Service land that—his business has been hurt by this. And it is all because we have a broken permitting process.

So FHWA, they are doing what the Forest Service wants to do, because they are dealing with emergency funding and it doesn't come out of the Forest Service budget. So, instead of building a road around the slide, they are having to repair the slide, so we are talking about $6 million to fix a gravel road. And if you stand back and look at it, you think, this has no environmental benefit. It is just the bureaucracy that is dealing with an antiquated system.

So I asked, why does the Forest Service not want you to build a road around it? Well, we have to go through at least an EA and maybe an environmental impact statement through the NEPA process, but if we go where the road already is, we can just do a CE. Well, my question is, why do you have to do a CE to fix a road that has been there for a long time? I mean, there is no common sense in these laws.

And I don't totally fault the bureaucrats; I fault Congress for not fixing the system. And Mr. Collins and I serve on another committee that has jurisdiction over NEPA, and I think there is going to be a good bipartisan effort this Congress to fix the myriad problems with NEPA.

And in talking to FHWA, they said the worst group to deal with is Corps of Engineers. You have to do a permit with Corps of Engineers.

So we need broad permitting reform. And we will just start at the end, and if you have one suggestion on permitting reform—we want to protect the environment, but we want a streamlined process where we can actually build stuff in America again.

Mr. SINGLETARY. If I had one suggestion, I would give States more authority to implement the programs and, kind of, make changes to the programs as necessary within their States.

A lot of times, they are much closer to the projects. We have a lot more at stake for some of them, because they are happening in our State. We can be a lot more responsive. Sometimes when we are working with our counterparts, our Federal counterparts, they may not be located—in fact, almost none of ours are actually located within the State, so we are dealing with folks at distance, and sometimes that can slow down the process.

Mr. WESTERMAN. Mr. LaTourette.

Mr. LATOURETTE. I agree with my colleague here from Oklahoma that State environmental agencies are more present and in the work with the regulated actor than Federal agencies are, unquestionably.

New Jersey has maximum assumption under almost every one of the Federal environmental laws, and then we add additional protections, because that is what our public demands. And we are able to trim permitting timelines down as a function of everything living under one roof.

We have an office called the Office of Permitting and Project Navigation, for example. They exist to steward projects through the regulatory process so as to not land in one of the gaps that folks have identified here today.

And so I believe maximum State assumption—but that needs to be funded by Congress, right? Categorical grants to State environmental agencies need to go up.

Mr. WESTERMAN. Mr. Chair, if it is okay if the other witnesses would submit a written answer to that, I would appreciate it.

I am obviously out of time, and I yield back.

Mr. COLLINS. Yes, I will probably finish with that question myself.

The Chair now recognizes Ms. Pou for 5 minutes.

Ms. POU. Thank you. Thank you, Mr. Chairman.

And thank you to all the witnesses that are here today.

We have heard and much has been said that, over the 50 years, the Clean Water Act has served to reduce pollution in waterways across this Nation.

With the passage of time, it is easy to forget why the law was enacted in the first place. Lakes were filled with chemicals. Streams were clogged with sewage. And we heard earlier testimony, or comments, about how rivers were literally on fire.

Our environment and public health has changed for the better thanks to the bipartisan Clean Water Act.

I would like to mention and to ask Commissioner LaTourette: New Jersey is an excellent example of how States can improve efficiency in the permitting process. Could you please share with us what are some of the best practices from New Jersey that you would recommend to other States?

Mr. LATOURETTE. So the first thing that I would recommend is that we support, federally, the assumption of the programs we have talked about here today by States, that the Federal Government increase its funding to States for implementation.

Our State employees are cheaper than your Federal employees, and I think that that is an important point. And they are closer to the work on the ground, and what we have seen in the State of New Jersey is a greater degree of efficiency and speed because of that integration of permitting processes.

Now, I know we have heard a lot today about delays costing time, costing money, and then that can be a problem. I recognize that that can be a problem. But permitting reform isn't just one thing. When we say that "it has taken 7 years to get this project permitted," there are local, State, and Federal considerations.

The most important thing that any regulated actor can do—and I know this because I counseled them as a lawyer in the private sector before—is to run all of their processes concurrently. There are so many issues that you can identify upfront and then talk to your State regulated agency beforehand, well before you ever make a permit application. Because we are there to work with you and identify any of the flags way upfront. And when you do that upfront, your permitting process is far more expedient.

Ms. POU. Thank you for that.

Can you also share with us how ensuring clean water for our communities pays dividends in terms of savings in other areas like public health and contributing to the economy?

Mr. LATOURETTE. So, aside from creating the 170,000 construction jobs that I mentioned, our water bank investments help to make our waterways more swimmable and more fishable, directly bearing on our tourism and recreational economy.

But there are really important public health issues at work here. Take, for example, in the northeastern section of New Jersey, where there are communities built out 100 and 150 years ago with really dated, old infrastructure—combined sewers that bring together the stormwater and the sanitary water, all going through pipes that are not big enough. And then what happens? Backups of that sewage into our streets that our children have to walk through on their way to school. That is not okay, right?

And by making more investment, we can both increase permitting timelines but get more projects in the ground.

Ms. POU. Thank you.

First of all, thank you very much for responding to that question, because my very own city of Paterson knows all too well what that impact is like, particularly when we are talking about combined sewer systems and how antiquated they are and how costly they can be. Having this in place is certainly going to be very helpful.

Thank you very much for your remarks.

I yield back, Mr. Chairman.

Mr. COLLINS. Thank you.

The Chair now recognizes himself for 5 minutes.

Mr. Hanners, Nucor, it says you are the largest, most diversified steel producer in the United States. Carbon footprint roughly 10 percent of the particulate emissions of the average steel mill out there; 95 percent less water than the average steel mill. Eighty-six percent of your process water is reprocessed before it is discharged.

I think it is safe to say that Nucor wants to be the best in the industry, hire the best people, take care of the environment, and, overall, be the best steward that you can be.

So I want to kind of delve into something real quick. I read through a lot of your testimony here, and I want to get into your West Virginia project, because I want—I live by example. I am just a commonsense-type person. You give me an example of what is going on, I can better understand it.

I want to kind of look at the loading dock and the barge problem that you had there. And I don't know how much you can speak on it, but I do know that, in reading here, it caused your project to go from $2.7 billion to $3.5 billion.

And then, if you could, I don't know if you can intertwine some NWP, the nationwide permitting, in that. Would that have helped? Not helped? Since this is obviously not the first loading dock and barge dock that you have ventured on.

Mr. HANNERS. Certainly. I appreciate the question.

You are right; we are as passionate about the environment and continuing to innovate to find cleaner ways to make steel. You would be astounded at our team and any of our sites you visited. It is part of our culture to find new ways to better serve the environment.

To your questions about West Virginia, the port facility is one example—there are others—of us finding a specific instance—in this case, it is mussels in the water, in the Ohio River, West Virginia—and then really struggling to find a solution to partner with the entity—in this case, the Corps of Engineers and the Fish and Wildlife department—to create a solution.

And it wasn't that we weren't ready to make the investment to create the solution; it is that we couldn't get clarity on what the solution needed to be. And that is where the boundaries and where we think reform could come in and really help us be much more efficient and on time and on budget with a project like this, is, we are willing to make the investments necessary to meet our responsibilities to the environment, but we need to know what they are. We need clarity, and we need the ability to take action in the way that is expected of us.

As long as the permitting process is consistent and it is clear to us what we need to do, and we can get the answers and responses we need in a timely manner, we are fully on board with making those investments and making those changes.

Mr. COLLINS. Well——

Mr. HANNERS [interrupting]. So your point about the $2.7 billion to $3.5 billion, over $3.5 billion now, that was one instance, but I could list off five or six others that were very similar to that.

Mr. COLLINS. Well, let me ask kind of what Chairman Westerman was asking when he said the one big change, if you could make one change.

And I know the two gentlemen to your right suggested more State rights. And believe me, I am big on State rights. I mean, it is a whole lot better than having this place up here make decisions for you.

But would you say clarifying regulations or States' rights would be—or something else?

Mr. HANNERS. So States' rights, yes. The State entities we work with are responsive, they are thorough. We partner with them; it feels like a partnership.

But I would also add judicial review, limiting judicial review. We are fully on board with complying, but we need resolution. And sometimes we will get, midnight, last day of the permitting process, we will get somebody who will drop in a challenge, and then we will need to extenuate the permit in order to——

Mr. COLLINS [interrupting]. I know——

Mr. HANNERS [continuing]. Go after that challenge.

Mr. COLLINS. I don't mean to break in. I know, in highways and transit, a lot of your road-builders just factor in an extra 30 percent of the cost to build roads and bridges just because of the environmentalists' frivolous lawsuits.

Mr. HANNERS. Yes.

Mr. COLLINS. Is there a number you all add into the equation?

Mr. HANNERS. No, we don't account for that upfront. But I'll tell you, what happens is, when we have bad experiences, a challenging experience, like West Virginia, it makes us more conservative with our next iteration of how we think about the returns we are going to generate on a process, which makes us less likely to make an investment in the future.

Mr. COLLINS. Right.

Mr. HANNERS. We are a successful company. We plan to continue to grow. But it does take a little bit of our willingness to make that next investment. It makes us ask more questions, to be more conservative.

Mr. COLLINS. Mr. Hasten, I want to give you 30 seconds to answer Chairman Westerman's question. What out there would you like to change first if you had the option?

Mr. HASTEN. I agree with everyone else that said, push as much down to the States as you can. They are in the local community, they know the situation, and there is more of a partnership.

And then I would think, at the Federal level, just some consolidation. You got all these individual fiefdoms all trying to determine things in an individual way, with no real accountability. Like——

Mr. COLLINS [interposing]. Yes.

Mr. HASTEN [continuing]. In my company, if I tell you, "I want this in 30 days," in 30 days, I am going to send you an email and say, "Where is it at?" and you will be held accountable. There is no accountability anywhere.

Just some accountability. Set some clear deadlines. We are not asking for anybody to lower the hurdles. Keep the hurdles high. Keep the standards high. Keep the water clean. But let's run the race, and let's hold people accountable to timelines.

Mr. COLLINS. Thank you. Thank you.

And I yield back.

The Chair now gives 5 minutes to Ms. Gillen for questions.

Ms. GILLEN. Thank you, Chairman.

And thank you to our witnesses for coming and testifying today.

Mr. LaTourette, in your testimony, you highlighted how, under section 404 of the Clean Water Act, project applicants were often challenged to adhere to two different but overlapping permitting processes at both the State and Federal level.

Can you talk about some of the ways that we can streamline the permitting process to get rid of duplicative and redundant requirements, but yet keep strong environmental protections in place?

Mr. LATOURETTE. Yes. I think one of the biggest things that we can do is to provide States with the incentive to adopt the Federal programs and implement them on behalf of the Federal Government.

Now, that doesn't give States a free pass, let's be clear. The States are still overseen—and should be—by the U.S. EPA and, in some instances, the Army Corps to ensure that we are compliant with the minimum Federal standard. But bringing it down to the State level would necessarily have a beneficial impact, as folks up here have recognized.

But that does not mean compromising environmental quality. And I am glad to hear everybody up here speak to that point. Because we have to acknowledge that the pollution controls that EPA sets are minimums—truly minimums. They are not acceptable in the State of New Jersey, and they don't allow us to be proactive about new pollutants that are emerging in the marketplace and in our water supplies.

Ms. GILLEN. Yes. Just following up on that, I want to get rid of redundancies in our permitting processes. I was a local government

official before I got here, and I know that sometimes we could get caught up, as you say, Mr. Hanners, in litigation forever just trying to get a project across the finish line. But we do have States with varying standards. So that is why, when I hear "States' rights" and things like that—some States don't have the same standards that others do.

Mr. Hanners, in your written testimony—I was not here for your verbal testimony—you talked about emerging contaminants and that some of the standards may be too high. Well, we know that these are carcinogens. And I certainly don't want my family drinking carcinogens; I don't want other people's families drinking carcinogens. And I do know the real costs of filtering these emerging contaminants out of our system, but I think that we need to agree that we have to have a very high standard when we are talking about water containing these emerging contaminants.

So what do you think is the best way forward to get some uniform agreement so we can streamline the permitting process, Mr. Hanners?

Mr. HANNERS. Well, I will say that manufacturing processes like ours, Nucor—but I can speak more broadly—are cleaner than ever. And we strive to find new technology to make it even cleaner. And I can give you examples like a carbon sequestration project we are navigating in Louisiana where it will make a material impact to the cleanliness of our steel. We are making those investments. We are working on those things all the time.

The challenge with the new regulation you mentioned, $PM_{2.5}$, is, we need a seat at the table. Because some of those standards are either unclear or we are not sure how to manage that problem. And if we have a seat at the table during the implementation or the build of that policy, then we can help, one, equip us with a better understanding of how to navigate that, but, two, potentially push back or help shape something that achieves an outcome of making the environment cleaner but also is feasible and implementable by companies like ours and manufacturers like ourselves.

Ms. GILLEN. Thank you.

Mr. Singletary, I believe in your written testimony you spoke a bit about how the permitting process is also complicated by multiple different agencies weighing in.

And I think that is also the litigation that you spoke about in your testimony, Mr. Hanners.

What is a way that you think that we could streamline the permitting process with giving a seat at the table to all the different various agencies that might be involved in a big project or might have some impact on a big project?

Mr. SINGLETARY. Your question—I am sorry, Congresswoman—was regarding multiple agencies——

Ms. GILLEN [interrupting]. Correct.

Mr. SINGLETARY [continuing]. In the same process?

I think making sure that the role of each of the agencies is well-defined and coordinated is probably the biggest issue.

I can tell you, when we look at our permitting program at the agency, I mean, we are looking beyond just what coordination with other agencies is like. We are looking—we have an Office of Continuous Improvement that has gone through every step that we take

internally to help determine what are the slowdowns in our process that are caused by us, how can we improve those.

We are putting big investments into different platforms that we need for the permitting process, bidding a rulemaking, and potentially some legislation to help streamline our process. I think something like that at the Federal level would really help coordinate all those efforts.

Ms. GILLEN. Thank you so much.

I yield back.

Mr. KNOTT [presiding]. Thank you, ma'am.

The Chair recognizes Representative LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman.

Thank you, panelists, for being here with us today as we talk about the Clean Water Act and its well intention back in the 1970s when passed and its weaponization these days to stop so many projects and other things beyond the scope of what I think was ever intended and been reinterpreted according to Army Corps and others.

So, when you talk about the different permits, the 402 permit under NPDES, National Pollutant Discharge Elimination System, all pollutant discharges into a "water of the U.S." are prohibited unless that 402 is granted. So this is for private sector as well as Federal.

I know we talk about a 404 permit for dredge/fill on something called the "waters of the U.S.," which—the definition of "water of the U.S." has been abused greatly in the last 20 years or so.

And when we are talking about dredge permits, for example, I can think of a really absurd example where there was a new bridge being constructed, where some of the pilings had to be within a lake. And so they had to move some of the soil to build the new uprights. And so that soil, being moved, it was now considered a pollutant, even though it is the same soil that started out under the water and could have just been moved to the side and remained under the water. Instead, it had to be hauled away, at who knows what expense and delay.

So the 402, again, is being abused. And the concern I want to bring up here is how it applies to firefighting and what the Forest Service has been looking at with requiring a permit to use a material for fighting fires—the fire retardant that is so extremely important—to be more effective in fighting and preventing the spread of fire.

I mean, again, we have seen it time and again with the fires in the West, in my home State of California. In my own district, the community of Paradise destroyed, community of Greenville destroyed, town of Happy Camp partly destroyed, others. And then what has really gotten a lot of people's attention, obviously, is what happened in Los Angeles here so far, even though it can be known that each year you are going to have the Santa Ana winds, you have the brushy hillsides, they suspend removal of brush, and that is partly why we are where we are in SoCal.

So, when we talk about the use of fire retardant—that is the pink stuff that gets dropped out of the aircraft, the DC–10s, the helicopters, and all that, when it isn't just straight water—we have to work to hang on to that.

So there was a lawsuit, incredibly. An environmental group sued the Forest Service a couple years ago to stop the use of that. And then, 2023, the court ruled the Forest Service violated the Clean Water Act by failing to get an NPDES permit to use it. So the court declined to use an injunction to completely stop the use of retardant, but at any moment, it could be taken away.

So for Mr. Hanners: We have never seen this before, where the Forest Service had to get this NPDES permit for applying the retardant. My understanding is that they make both aerial fire retardant and airplanes use it to put out fires. Firefighters somehow have to battle through this lawsuit process.

So would you talk to us about this a little bit, Mr. Hanners? It would have to come from either EPA or jump through the hoops of California, and it can take a very long time. We could lose this product if they get their way. Would you please comment on that a little bit?

Mr. HANNERS. Certainly. I can't comment on the specifics of fire retardants and that policy, the decision you are referencing. But I can say, for manufacturers like Nucor across America, it is important we have a robust supply chain of fire retardants and, I think more importantly, a little bit more broadly, we understand the rules of usage of not just fire retardants but navigating a permit process or using a new type of—or even a well-used type of consumable we may use in our process.

Mr. LAMALFA. Well, if we had to go to straight water, if you didn't have this material, which has a sticky factor to it and it lasts longer—water just coming out of an aircraft, especially in hot weather, once it hits that fire, completely dissipates.

If we don't have this material, how effective are we going to be at suppressing or controlling the spread of fire?

Mr. HANNERS. I can't comment on that.

Mr. LAMALFA. You can't comment on it. All right.

Should Congress look at clarifying the Clean Water Act to ensure these activities continue to be done?

Mr. Hanners.

Mr. HANNERS. Could you repeat the question?

Mr. LAMALFA. Should Congress look at clarifying the Clean Water Act to ensure these activities, such as aerial application, can continue without this onerous permit?

Mr. HANNERS. I can't comment on that.

Mr. KNOTT. The Chair recognizes Representative Norton.

Ms. NORTON. Thank you, Mr. Chair.

This is a question for Mr. LaTourette.

The District of Columbia, the Nation's capital, which I represent, has greatly benefited from Federal investments in our water infrastructure over the last decade. The DC Water and Sewer Authority's multibillion-dollar Clean Rivers Project is expected to reduce combined sewer overflows in the District's waterways by 96 percent by 2030.

Mr. LaTourette, how do investments in clean water infrastructure improve public health and grow the economy?

Mr. LATOURETTE. I believe the question is, how do clean water investments improve the environment and the economy?

Ms. NORTON. And grow the economy, yes.

Mr. LATOURETTE. So the first thing that I will say is, the clean water investments first and foremost protect public health and the environment. Our first job is always protecting the health of our residents. And when we have discharge into waterways that is above any of our State or Federal standards, there is a risk of public health exposure. That is what this is all based upon.

So, first and foremost, the investments in clean water are helping to protect people's health and their lives.

And, then, in addition to that value—we have a growing economy in the State of New Jersey. We are continuing to build out our State with new businesses that rely on sewer service expansions. No sewer service, no new multifamily residential projects, no new business expansions into AI or other sectors that we are focused on. And so those investments are critical, right? It is the bones upon which our entire economy is based.

Ms. NORTON. Thank you.

This is another question for you, Mr. LaTourette.

The Potomac River provides over 75 percent of the national capital region's drinking water and is the only drinking water source for DC and parts of northern Virginia, which have just 1 day of backup water supply, which poses a risk to residents of the national capital region, the region's economy, and the national security.

What are the immediate and long-term implications of pausing and cutting Federal funding for critical Clean Water Act investments?

Mr. LATOURETTE. I think that the impact of pausing Federal funding, scrutinizing it—whatever the words that are being used to describe what is happening—the implications are exactly what we are hearing folks talk about from the perspective of business and industry about permits holding up projects and delaying economic growth. The same is true for either an intended, accidental, temporary—whatever we call it—pause on Federal funding to the States that are funding these water infrastructure projects.

And we need them now more than ever. I am glad you point out the issue of water supply, Congresswoman, because in New Jersey we lack, in many places, the continuity that is necessary to make sure we have several days of water availability were there to be an issue with a major water source like you are explaining. And that investment is critical to solving that allocation need.

Ms. NORTON. Thank you very much, Mr. LaTourette.

And I yield back.

Mr. KNOTT. Thank you.

The Chair recognizes Representative Taylor.

Mr. TAYLOR. Thank you, Chairman and Ranking Member, for holding this hearing today.

And thank you to our witnesses for their testimony and insight.

With the Ohio River running through my district, I want to ensure the Federal Government implements policies that utilize the river's resources to support businesses and people while creating jobs and economic opportunities which we desperately need. I am excited to work with members of this committee to pass meaningful legislation and a strong WRDA bill that allows the United States to prosper.

Previous administrations have implemented several regulations related to the "waters of the United States," or WOTUS. Through redtape and litigation, these WOTUS regulations have hindered States, businesses, and energy producers from carrying out simple projects.

Mr. Hasten, in your testimony, you highlighted how the Arkansas Electric Cooperative Corporation received a streamlined Nationwide Permit 3, which took 9 months to get, causing damage to your hydropower plant.

I am confident that a streamlined permit should not have taken 9 months to complete. Based on your expertise, what would a normal timeframe have been?

Mr. HASTEN. Thank you, Congressman. I think it depends on the work. So, there are different permits. I think in our estimation, given that it is an existing structure, everything we were asking for was to return it to the design condition.

The fact that the Arkansas River is an extreme water resource, that adds a level of additional scrutiny. So, that scrutiny takes some time. But I think in our estimation and planning, we would have thought for a nationwide permit to do a repair on a weir, which is there to prevent cavitation of—well, accidental cavitation of the turbines, which if you don't take care of that, can affect reliability—we would have thought 60 to 90 days, 30 days. It is in that timeframe, definitely not 9 months.

And then the challenge is, when you finally get it—it is valid for 5 years, so that is a good thing—but these conditions in the river that allow this maintenance, you are sort of at the whim of God and nature as to when that will occur.

And if it doesn't happen in the next 5 years, we have to go through the same process. You see how we could keep missing the boat.

Mr. TAYLOR. Got you. With a 9-month approval process for maintenance repairs on existing energy projects, what does this administration and Congress need to do to eliminate some of these burdensome requirements?

Mr. HASTEN. I think definitely continuation of these nationwide programs, which the intent of those is streamlined reviews. Maybe set some clearly defined timelines on what those are, and maybe push us to say, hey, let's do the right thing, but let's do it in a more efficient fashion, increase coordination between the different agencies, right?

Instead of it just being a scattergram of confusing requirements, as Mr. Hanners said, not sure what you have to comply with, something that requires a singular source, a singular—somebody's the lead agency, but there is an answer, here is the answer, we know what it is, and we know what to do.

I think also—from Arkansas, so your razorbacks—I shouldn't want to put up a transmission line and find a hog wallow out there where the wild hogs have been digging around, and there is some mud and some water, and then have to wonder if that is a "water of the U.S."

But I do have to wonder, and I have to hire consultants to come tell me if a pig wallow in the middle of a field is "waters of the U.S."

And so the *Sackett* decision, I think, tried to eliminate some of that lack of common sense and good environmental science, but I think we still have very broad determinations of what are "waters of the U.S."

And so in my opinion, adhering to what the Supreme Court said and requiring Federal agencies to comply with that, and let's get clear definitions: "waters of the U.S.," waterways, as I have heard other testimony.

We want to protect the water, but a mud wallow in the middle of a field that stops a transmission line, when I have got a huge lithium deposit in Arkansas that I think our Nation also wants to get lithium out of the ground, rare earth metals, that kind of thing, if it delays those types of projects, you are just delaying those types of national priorities.

And I would say also just better communication and transparency so that everybody can see a request is in, here is your due date, here is the status, something that is more transparent than you just send it and then hope for the best and wait for months.

Mr. TAYLOR. Thank you very much.

Chairman, I yield back.

Mr. KNOTT. Thank you, sir.

The Chair recognizes the Representative from Alabama.

Mr. FIGURES. Thank you, Mr. Chair, and thank you to the committee leadership for hosting this—or holding this hearing rather, and thank you to all of you guys for being here for your time. I know it is not easy to sit here and take all of these questions.

Listen, as I have sat through this hearing, I think something is becoming abundantly clear, and that is that there is a balance that is needed.

I have not heard anyone on this panel say that there should be no Federal role for permitting.

I have certainly heard several pieces of testimony that indicate that the State needs a more dynamic role and a more—I guess, more of a leadership role in the permitting processes.

So if we can go down the line, about 45 seconds each or so, can you talk to me about what you think that appropriate balance is between State and Federal involvement starting with you, Mr. Singletary?

Mr. SINGLETARY. Thank you. Like I already said, I think the States, I mean, we, this is our homes, right? I mean, we are permitting activities, regulating activities that affect us directly, affect our citizens directly.

I think having more control at that State level. Obviously there is a role for EPA and for the Federal Government to play in environmental protection, but nobody has as much of an interest as the States do in protecting their environment, but also ensuring that we have prosperity, economic prosperity in a State.

To us, economic prosperity and environmental protection, it is all about the well-being of Oklahomans. So I think that is where our real interests come.

So I think that kind of highlighting the State's role in implementing these programs, and in some ways, even helping design the programs, would be very beneficial.

Mr. FIGURES. Thank you.

Mr. LaTourette.

Mr. LATOURETTE. I would say with respect to the Clean Water Act permitting programs we have been discussing here today, consider the State of New Jersey a case study, if you will.

We have grown our economy at the same time that we have consistently, over years, on a bipartisan basis, exceeded minimum Federal standards, at the same time, having 90-day, 120-day clocks on permitting decisions.

We can do both. The balance exists. It is a bit of a fallacy to suggest that it doesn't.

Mr. FIGURES. Mr. Hanners. And I will note that Nucor has a facility in Eufaula, Alabama, which is in my district.

Mr. HANNERS. We do, and thanks for your support, Congressman. We have hit on a number of these items, but I will just summarize. Nationwide permits are very important to us. We do a lot of projects that have very minimal impact on the environment, and we need that expedited process of being able to get that permit nailed down in an efficient manner that is understandable and a little bit more responsive, as you have heard from the others providing testimony.

The second thing is pushing more decisionmaking to the State side. I hit it again, but I think it is so important. We have partners with State authorities, and it works very well when we can go to a State, whether it be Alabama, we can talk about the project we are trying to accomplish, and we can get quick answers, and we can get solutions on how we navigate together the permitting process.

And every time for us, in the States we work in, it has a good outcome.

The last thing I would say is just further limiting judicial review. With each of our projects—I shouldn't say "each," but many—we will gets to the finish line of what we expect to be the end of a permit, and we will often have midnight entries of a challenge to the permitting process, and that dramatically can extend the permitting process.

And we are not against—we want those challenges to be heard, but we do need some better limits on how long those challenges can persist without a solution.

Mr. FIGURES. Thank you.

Mr. Hasten.

Mr. HASTEN. Yes, I think clean water and good efficient permitting for infrastructure are not mutually exclusive. So if you look at—and I heard the questions, the balance, sort of like where the Federal role and the State's role in this process.

I see the Federal Government as sort of that higher, overarching looking at how the States impact each other and so—I grew up in Iowa. So if a polluter in Iowa did something—now I live in Arkansas—it is going to make its way down the Mississippi River to Arkansas.

So, therefore, I think the Federal Government has a role in that because each State would individually—could act in their own interest or have different rules.

So, when it comes to setting the standards, when it comes to those types of waterways, when it comes to overarching rules that

protect those types of bodies of water and ensures good compliance among the States, I think the Federal Government has the role there.

I think to the maximum extent that they could then say, well, these are the rules, this is what it is, push some of the enforcement of those rules and the permitting down to the States where they are in those local communities with those companies, I think, to the most extent that you could do that, I think the process would be more efficient.

Mr. FIGURES. Thank you. And one thing I will note about you, Mr. Hasten, one decision that cannot be balanced is your decision to attend Auburn University instead of the University of Alabama. Roll tide.

Mr. HASTEN. War eagle.

Mr. FIGURES. Thank you, gentlemen.

Mr. KNOTT. The Chair recognizes himself for 5 minutes.

Mr. Hanners, I want to talk to you, going back to this topic of the West Virginia plant project, that the price overrun almost eclipsed $1 billion. And for the average person, I think that is a very sort of esoteric subject.

Can you walk me through what led to that, who was the source that challenged the permitting process, and how did that cost breakdown unfold once it was in motion?

Mr. HANNERS. Certainly. I appreciate the question, Mr. Congressman.

Mr. KNOTT. I mean, the average person has no idea. You get a permit——

Mr. HANNERS [interposing]. Right.

Mr. KNOTT [continuing]. And you start to build a project——

Mr. HANNERS [interposing]. Right.

Mr. KNOTT [continuing]. How in the world could it be delayed and then $1 billion added to the cost?

Mr. HANNERS. Right. And when we make a decision to make an investment like that, the many millions of dollars, the biggest in our company's history, the biggest in West Virginia's history, and we are looking forward to the period of—it is going to take us 4 years, potentially longer, to build that project.

So once that decision is made to make that investment, we started the permitting process immediately.

And if you are asking for how did that go wrong, or where did we run into challenges there, it was really with the Corps of Engineers as it relates to the scope of what needed to be permitted for that project.

Mr. KNOTT. Right.

Mr. HANNERS. It started off with a smaller area. It was then broadened months after we got into the project, and that required us to include many other studies on a bigger piece of——

Mr. KNOTT [interrupting]. So you received an initial permit, and then the goalposts were moved?

Mr. HANNERS. No. We were in the permitting process when the goalpost was brought.

Mr. KNOTT. Okay.

Mr. HANNERS. And then that led to your other point about the costs you incur because of that. You are executing a project like

this, and you have to buy equipment that is shipping from many locations. And this is massive equipment.

So now this equipment has to sit in storage, and you are paying for storage, you are paying for additional transportation.

You made decisions to employ a team, because you have to make those employment decisions very early on in a project to start to build out the capabilities you need from a people standpoint. So now you have extra people that you are paying early, right?

You have contractors on site that you need, but they are not doing productive work yet.

Mr. KNOTT. Right.

Mr. HANNERS. So all that cost stacks up to a very big impact.

Mr. KNOTT. And do you have any type of relief once the Army Corps of Engineers starts to move those goalposts, do you have any way to challenge it, appeal it, question the reasonableness of it?

Mr. HANNERS. No. Very minimal. And the responsiveness is frustrating at times. It is very hard to get an answer at times. You don't know exactly who to go to or who is the authority making what decision within that Corps of Engineers specific challenge you are trying to navigate.

So from a company like ours standpoint, from a manufacturer's standpoint, it is very frustrating to navigate what the actual challenge is you are trying to tackle.

Mr. KNOTT. Right. And in terms of the problem, would you say it is the implementor or the actual language within code itself that is the problem, or is it——

Mr. HANNERS [interrupting]. Oh, that is a tough question.

Mr. KNOTT. Is it the regulator or is it the regulation?

Mr. HANNERS. I think it is a combination of both, but I will tell you that we have very different interactions with the Corps of Engineers in different areas on the Ohio River even.

So there is an implementor factor certainly, just an understanding of the policy that is applied differently from this area to this area.

Mr. KNOTT. Right.

Mr. HANNERS. But that can also be, I think there is a need to tighten up some of that language so that we understand the rules, the implementor has a very clear understanding of the boundaries, and I think that best is answered by pushing more authority to the State in those instances.

Mr. KNOTT. Sure. What deference or what consideration does the Army Corps in this West Virginia project, what did they give to the billion-dollar increase in cost?

Mr. HANNERS. I don't know that they—any. I——

Mr. KNOTT [interrupting]. No consideration?

Mr. HANNERS. Very little recognition.

Mr. KNOTT. No consideration. So is it also improper for me to conclude or to assume that this project would have led to a more efficient, cleaner operation, more modernized technology, et cetera? Is that correct?

Mr. HANNERS. Absolutely.

Mr. KNOTT. And so with all of these delays and increased costs, they are preventing a more modern operation from coming online?

Mr. HANNERS. Absolutely.

Mr. KNOTT. So there is a perverse incentive here.

Mr. HANNERS. Absolutely.

Mr. KNOTT. They are using "waters of the United States" to slow the bringing of a new project online?

Mr. HANNERS. I would absolutely agree with that.

Mr. KNOTT. And that is not just unique to West Virginia and your one project, correct?

Mr. HANNERS. That is correct.

Mr. KNOTT. Okay.

Sir, Mr. Hasten, in terms of one of the answers you gave earlier, you said that it takes 5 years, and what stuck out to me is, to build a simple, natural gas powerplant.

If there was more regulatory certainty, less judicial review vagueness, and the ability just to construct it with a front-end permit, and that gave you a smooth sail, how long should the construction, start to finish, take?

Mr. HASTEN. If you streamlined the permitting process, you just look at what is the time right now until you get your permit—and each project is different, so it is hard to give you an exact number of months.

Mr. KNOTT. Yes.

Mr. HASTEN. But it would translate directly into, reductions in that timeline are going to reduce the overall time, right?

The delays that are most costly are when you think you have got it all laid out, and then as Mr. Hanners said, you have purchased very expensive equipment, and then when the permit doesn't come through or those delays come in, then there are huge carrying costs on these projects.

So any efficiency we can do there, and if we can tighten timelines and not lower the standard, but, like, why look at the same thing three times, let's do it one time——

Mr. KNOTT [interposing]. Yes.

Mr. HASTEN [continuing]. That type of thing, that will translate into savings in projects, and we will be able to get infrastructure in service, online faster.

Mr. KNOTT. Great. Thank you.

The Chair recognizes Representative DeSaulnier.

Mr. DESAULNIER. Thank you, Mr. Chairman. I want to thank the witnesses as well.

I represent a district in northern California that represents most of the San Joaquin-Sacramento Delta, the largest estuary west of the Mississippi. It provides over half of the river flow in the State of California.

Our current President is becoming familiar with these dynamics. I have represented it for most of the last 35 years at the local, State, and Federal level.

Mr. LaMalfa is not here, but we negotiated a partnership when we were in the legislature that would help change the dynamic. So the first time in the history of the State, we would require permitting by our ag industry because their aquifers were collapsing.

The San Joaquin Valley creates one-third of the vegetables and fruit in the United States. It is an enormous agricultural and economic benefit. So getting this balance, from that perspective, has always been interesting.

In 1972, if my memory serves me, when the Clean Water Act was passed, one of the premier, in my view, pieces of legislation environmentally—and it should be businesswise as well—Richard Nixon was President. It passed out of the Senate with no "no" votes. It passed out of the House with, I think 11 "no" votes.

And then President Nixon vetoed it, and they overrode the veto with huge bipartisan support.

In that context, it seems as if, and for all of you, but I am going to start with Mr. LaTourette and his experience specifically about the delta smelt and how all of that is intertwined in our instance, but in other instances in environmental protection.

But it does seem as if we could have improved our efficiency to the point of—and to the chair's point—of doing more of this upfront.

Litigation is not an effective way, I don't think, as a progressive Member of Congress, to provide oversight. So to the degree we can do it, it is more efficient.

And I am somewhat frustrated sometimes that we haven't made it more efficient for everyone. Although I think we have made great strides, in particular in California.

The California Water Project, one of the great engineering feats in American history, started by Governor Pat Brown, allowed for all of this.

So in that context, the recent news, having dealt with, the Endangered Species Act and the delta smelt specifically, it is the canary in the coal mine as a lot of these circumstances are.

And still having the balance of when to hold water, when to release water, in an environment that is changing every year because of climate change and the relationship to the Sierra snowpack in our case.

So could you speak, Mr. LaTourette, in your experience, that dynamic where it is not just about, in our instance, the delta smelt. It is the canary in the coal mine that they represent, about the health of the largest estuary west of the Mississippi, which obviously has context of clean drinking water and the supply of clean drinking water for the country.

So how do we meet that balance but also in the context of, it is, in this case, it is not just about that particular species—although it is important in and of itself—but it is more the impact that it represents to the health of the delta in this case?

Mr. LATOURETTE. Can you just say that last part one more time, maybe a little closer to the mic? I want to make sure I am getting it. I think it is an Endangered Species Act question.

Mr. DESAULNIER. Well, no, more generally, the health—the environmental health of someplace like the San Joaquin Delta is important to clean water, that if you are not balancing all of this, you are going to have to spend more money on clean water rather than less.

Mr. LATOURETTE. So——

Mr. DESAULNIER [interrupting]. So, the environmental balance that benefits everybody.

Mr. LATOURETTE. So, I think it is important, as I said to the Congresswoman before, that we look at this issue a bit more holistically, right, because any one project that is getting built, and we

are concerned about a permit from under the NWP or a permit under the Clean Air Act for particulate matter, there are multiple things going on in the development of any one site, that all bear on the greater environmental impact in that region.

And so I think we have to look at the permitting matters across the board, and the way that we do that, to promote coordinated environmental governance that is conscious of the air issue, the land issue, the water issue, across the board, is that we have a mechanism inside our State environment agency that brings every internal State agency and the Federal agencies that touch that, to one table.

It is a service that we provide to the regulated community, because any one regulated actor may not see the greater context of environmental health. If we bring everyone around the table, we can help share that information so that we are doing the best to protect the environmental health across all media.

Mr. DESAULNIER. Thank you.

Thank you, Mr. Chairman. Always willing to work with you and others to try to make the system work more efficiently.

Mr. KNOTT. Thank you, sir.

The Chair recognizes Mr. Perry for 5 minutes.

Mr. PERRY. I thank the chair and thank the witnesses. This to me falls into the category of "No good deed goes unpunished."

To me, the radical left has been so hell-bent at stopping traditional energy power and projects, the things that provide us with nearly every modern, imaginable good that we have, and the abuse of the system that we have, to do their bidding.

That is what I have seen over the course of my time here. The radical left's weaponization, particularly of section 401 of the Clean Water Act, is a perfect example of the anti-energy mindset.

It is actually kind of like an anti-civilization mindset taking hold and being used to attack projects for which they disagree. And as many have stated here along the line, you get a permit, you think you are going to work, and then it is actually a strategy to let you build out as much of the project as possible and stop it at the end to chill investment for future projects, which is just mind-numbing.

I will give you a couple examples. The State of Washington used section 401 to kill the Millennium Bulk Terminal Project due to nonlisted adverse impacts.

Now, they might have all been valid adverse impacts. Unfortunately, none of them related to water quality. And, again, I will remind everybody, this is section 401.

The State of New York used section 401 to deny a pipeline project in Raritan Bay due to the potential greenhouse gas emissions from the project.

Well, greenhouse gas emissions are unrelated to water quality, right? This is 401. And, oh, by the way, like, I get that they don't love a pipeline. I am not sure I want a pipeline in my backyard, either.

But so now we are going to put the fuel on a train, and they are not going to like that, either. So then we are going to buy the fuel from Russia or some other country that hates us. This is a brilliant plan.

The State of Oregon killed an LNG export terminal using section 401 process.

The State of New Jersey denied a water quality permit for a proposed pipeline project, and they actually cited water quality issues. However, the environmental groups that pushed the State into action made it very clear they were just simply in opposition to traditional energy projects.

Fortunately, during the first term of the Trump administration, it was identified, this weaponization, for what it is, and took action to limit the scope of the 401 to actual water quality issues.

And I would cite the gentlelady from Ohio, Representative Sykes. I was alive when the Cuyahoga River was on fire.

None of us on this committee, probably none of you in the audience, agree with a pipe coming out of a factory dumping into a river and filling it with a bunch of stuff that is flammable and killing—like, none of us agree with that, but that was 50 years ago. We don't do that anymore. And to use 401 to stop legitimate projects for everything other than what 401 is used for, like, has to be recognized, acknowledged, and something has to be done about it.

It is vital that Congress acts to make the change permanent. Last Congress, we took action to do so by passing the Water Quality Certification and Energy Project Improvement Act through this committee and included it in H.R. 1.

And it has got to be brought back up and taken across the finish line. It is an important step to stop the radical assault on traditional energy projects.

Mr. LaTourette, your Governor Murphy is appointed alternate commissioner to the Delaware River Basin Commission. God bless him.

The DRBC, as we know it, is under immense pressure from environmental groups that receive significant Federal funding. It is not just paid for by people out in the community that say, well, we want it to—it is paid for by tax dollars, to move forward with a ban on hydraulic fracturing. And Pennsylvania has got a lot of resources, so does New York.

But in doing so, the commission denied Pennsylvanians in the river basin the ability to access the mineral rights that they themselves own, the underpinning of the United States of America and free society itself. They can't extract it but for the commission's actions.

It has also denied the Nation and the world a critical source of natural gas at a time of high price and significant volatility in the market, and, again, we turn to Russia, because of things like the Jones Act and these type of things, to buy gas for New England.

And I don't want to be paying those rates, but I don't think those people do either, but we can't get—Pennsylvania can't get its product to market because of this kind of stuff.

The DRBC is an unelected group of bureaucrats. Legislation that I have offered, the DRILL Now Act, will be reintroduced this week, and addresses the misguided power grab by the DRBC.

This river basin commission—and there are three of them in Pennsylvania that cover the State—impose more stringent regulations than the duly elected representatives of the Commonwealth.

That kind of stuff has got to end, somebody has to be accountable, and it can't be people at these commissions that aren't elected and impose these kind of—these regulatory prohibitions on the citizenry and our country.

I yield the balance.

Mr. KNOTT. Thank you, Representative Perry. The gentleman yields back.

Are there any further questions from any members of the subcommittee who have not yet been recognized?

Seeing none, I ask for unanimous consent to enter into the record the following letters related to the Clean Water Act permitting: From the Industrial Energy Consumers of America, dated February 10th, 2025; the Interstate Natural Gas Association of America, dated February 10th, 2025; American Society of Civil Engineers, dated February 11th, 2025; the Western States Water Council, dated February 11th, 2025; the Waters Advocacy Coalition, dated February 11th, 2025; the Louisiana Department of Environmental Quality, dated February 11th, 2025; and lastly, the Associated Builders and Contractors, dated February 11th, 2025.

Without objection, so ordered.

[Mr. Knott's submissions for the record are on pages 65–79.]

Mr. KNOTT. This concludes our hearing for today. I would like to thank each one of the witnesses for your time and your testimony. The subcommittee stands adjourned. Thank you.

[Whereupon, at 12:31 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Letter of February 10, 2025, from Paul N. Cicio, President and Chief Executive Officer, Industrial Energy Consumers of America, to Hon. Mike Collins, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Brad Knott

FEBRUARY 10, 2025.

The Honorable MIKE COLLINS,
Chairman,
House Subcommittee on Water Resources and Environment, Washington, DC 20515.

The Honorable FREDERICA S. WILSON,
Ranking Member,
House Subcommittee on Water Resources and Environment, Washington, DC 20515.

Re: Comments for the Record on Hearing "America Builds: Clean Water Act Permitting and Project Delivery"—44 Natural Gas Pipelines Issue Orders to Manufacturers to Reduce/Curtail Use of Natural Gas Due to Inadequate Pipeline Capacity

DEAR CHAIRMAN COLLINS AND RANKING MEMBER WILSON:

The manufacturing sector's economic growth has never before faced such a growing crisis as we are faced with today, due to inadequate natural gas pipeline capacity. The recent protracted cold weather has once again shown the fragility of our nation's natural gas system as 44 pipelines (see Figure 1) across the country have issued either operational flow orders (OFOs) or curtailment notices to manufacturing companies to reduce demand in order to service the needs of homeowners, power companies, and LNG exports. *When there is inadequate pipeline capacity, manufacturing companies are always the first to be curtailed*. Curtailment can cost millions of dollars per day, disrupt operations, damage equipment, impact supply chains for consumer, industrial, and national defense products.

Some manufacturers saw their natural gas prices increase twentyfold. If we do not reduce our natural gas consumption after notice has been given to do so from the pipeline, the pipeline can penalize the manufacturer by charging higher prices ranging from $40 per MMBtu to $120 per MMBtu.

One hundred percent of IECA member companies are from the manufacturing sector and their competitiveness is dependent upon the affordability of natural gas and electricity. Natural gas is used as a fuel and feedstock. The U.S. manufacturing sector consumes 26 percent of the U.S. natural gas and 25 percent of U.S. electricity. Manufacturing is the only sector that operates 24/7, which requires reliability of natural gas and electricity.

Weather in December and January challenged the pipeline supply chain of interstate, intrastate, and Local Distribution Systems (LDCs). Pipeline warnings/notices to reduce or curtail supply are now in both winter and summer, more frequent and severe due to higher demand for electricity generation and LNG exports. Increasing electrical demand by data centers, crypto currency, and the electrification of the economy are all intensifying the problem. Despite increased demand, the U.S. Energy Information Administration (EIA) found that the U.S. added record low interstate natural gas pipeline capacity in 2022 and 2023.

The manufacturing sector is especially vulnerable along the entire East Coast from Georgia to New York, which is supplied by the Transco Pipeline. There is zero availability of firm natural gas pipeline transportation that is needed to expand existing facilities or invest in new ones. Until there is an increase in pipeline capacity, we urge electric utilities to not prematurely shut down coal-fired electric generating

units. IECA sent a letter to the Federal Energy Regulatory Commission (FERC) on February 4 urging them to address this issue by holding a Technical Conference.[1]

We ask Congress to take swift, decisive action to address this urgent problem. First, we urge Congress to quickly advance energy permitting legislation, which would expedite the expansion of our nation's natural gas pipeline network to serve our nation's growing demand.[2] Second, we urge this Subcommittee to hold a hearing to allow manufacturing companies to explain the gravity of the impacts of inadequate natural gas pipeline supply.

Sincerely,

PAUL N. CICIO,

President and Chief Executive Officer, Industrial Energy Consumers of America.

cc: House Committee on Transportation & Infrastructure

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with $1.3 trillion in annual sales, over 12,000 facilities nationwide, and with more than 1.9 million employees. One hundred percent of IECA members are manufacturing companies whose competitiveness is largely determined by the cost and reliability of natural gas and electricity. IECA's sole mission is to reduce and avoid energy costs and increase energy reliability through advocacy in Congress and regulatory agencies, such as the Federal Energy Regulatory Commission. IECA membership represents a diverse set of industries including chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement.

Figure 1

1.	Atlanta Gas Light
2.	Acadian: LA
3.	Alabama Tennessee Gas Pipeline
4.	ANR Pipeline Company
5.	Atmos Energy: VA
6.	Blackhills Pipeline
7.	Columbia Gas Transmission Company: MD, VA, PA, WV
8.	Danville Utilities
9.	Dominion Energy: SC
10.	Duke Energy: OH, KY, SC, NC
11.	East Tennessee Natural Gas
12.	Eastern Gas Pipeline
13.	Enable Gas Transmission, LLC
14.	Enterprise Acadian
15.	Enterprise Intrastate
16.	Enterprise Texas Pipeline
17.	Houston Pipeline
18.	Kinder Morgan Texas
19.	Liberty Utilities
20.	Louisville Gas and Electric
21.	Michigan Gas Utilities
22.	MoGas Pipeline
23.	National Grid
24.	Natural Gas Pipeline (NGPL)
25.	NIPSCO

[1] IECA Requests FERC Hold Technical Conference—No Firm Pipeline Capacity Available on East Coast for Manufacturing, https://www.ieca-us.org/wp-content/uploads/02.04.25__Request-for-FERC-Technical-Conference.pdf

[2] 49 Consumer Organizations Support Permitting Reform to Build More Natural Gas Pipelines, https://www.ieca-us.org/wp-content/uploads/07.29.24__Senate__House-NG-Pipeline-Coalition-Letter__FINAL.pdf

Figure 1—Continued

26.	Northern Border Ventura
27.	Northern Natural Gas: SD
28.	Northwest Pipeline
29.	North Shore Gas
30.	Ozark Gas Transmission
31.	Panhandle Eastern Pipe Line Company
32.	PECO, An Excelon Company
33.	Peoples Gas
34.	Piedmont Natural Gas: TN, NC, SC
35.	Public Service Company of Colorado
36.	Southern Natural Gas Company
37.	Spire MoGas Pipeline
38.	Summit Natural Gas
39.	Tennessee Gas Pipeline Company
40.	Texas Eastern Transmission Pipeline: TX, TN
41.	Texas Gas Service
42.	Transco: VA, NC, VA, SC, GA
43.	UGI Pipeline
44.	Until, Maine Natural Gas

Letter of February 10, 2025, from Amy Andryszak, President and Chief Executive Officer, Interstate Natural Gas Association of America, to Hon. Mike Collins, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Brad Knott

FEBRUARY 10, 2025.

The Honorable MIKE COLLINS,
Chairman,
Water Resources and Environment Subcommittee, United States House of Representatives, 2165 Rayburn House Office Building, Washington, DC 20515.

The Honorable FREDERICA WILSON,
Ranking Member,
Water Resources and Environment Subcommittee, United States House of Representatives, 2165 Rayburn House Office Building, Washington, DC 20515.

DEAR CHAIRMAN COLLINS AND RANKING MEMBER WILSON,

I am writing to offer the views of the Interstate Natural Gas Association of America (INGAA) for the Subcommittee's America Builds: Clean Water Act Permitting and Project Delivery hearing.

INGAA is a trade association representing the interstate natural gas pipeline and storage industry. Our members transport most of the natural gas consumed in the United States through a network of approximately 200,000 miles of interstate transmission pipelines. These large capacity, critical infrastructure systems are analogous to the interstate highway system and span multiple states or regions. Our industry delivers natural gas to end users such as local distribution companies, electricity generators, industrial manufacturers, and LNG export facilities.

For more than a decade, the shale revolution has gifted our country with abundant natural gas supplies, which has elevated the need for additional infrastructure to move gas around the country. Pipelines make it possible to deliver North America's abundant natural gas reserves to fuel our homes, businesses, and the American economy.

Natural gas infrastructure is inherently reliable, built in compliance with exact safety regulations and engineering standards. According to the Pipeline and Hazardous Materials Administration (PHMSA), these linear infrastructure networks are not only the most efficient but also the safest way to transport large energy quantities like natural gas and petroleum products with over 99.999% of all pipeline deliveries being made safely each year. The North American Electric Reliability Cor-

poration indicated in its recent summer assessment that "natural gas supply and infrastructure is vitally important to electric grid reliability, particularly as variable energy resources satisfy more of our energy needs . . . " Moreover, the Energy Information Administration (EIA) indicated that natural gas was the primary source—roughly 43 percent—of U.S. utility-scale electricity generation in 2023 and projected last month in its short-term energy outlook that domestic natural gas demand will outpace supply over the next two years.

The United States needs a modernized network of natural gas infrastructure to meet its energy, economic and security goals. Although enactment of the Fiscal Responsibility Act (FRA) contained incremental permitting improvements, broad reforms to the Clean Water Act (CWA) and other statutes are needed to address the fact that current permitting processes to site and approve new and expanded natural gas and liquid energy infrastructure remain slow, inefficient and overly litigated. These ongoing challenges hamper access to domestic natural gas resources and other fuel sources, raise energy costs in certain regions, and in the worst cases, limit access to energy and create reliability issues during periods of extreme weather.

INGAA applauds the Subcommittee's interest in potentially advancing legislative measures that would expedite energy infrastructure permitting and asks that you consider the following CWA recommendations of importance to the natural gas transmission pipeline industry.

CWA SECTION 401 ENERGY INFRASTRUCTURE PERMITTING REFORMS.

Section 401 of the Clean Water Act (CWA) adopts a "cooperative federalism" approach to regulation by giving each State or Tribe a significant, carefully defined role in regulating discharges into waters of the United States (WOTUS). If an activity authorized by a federal agency would result in a discharge into WOTUS, the State or Tribe where the discharge occurs must certify that the discharge complies with CWA Sections 301, 302, 303, and 307. The federal agency may not authorize the activity unless the State or Tribe certifies the discharge's compliance, certifies compliance subject to specific conditions, or waives its right to certify. Section 401 requires the State or Tribe to determine compliance within a "reasonable period of time," not to exceed one year.

Interstate natural gas pipeline projects frequently cross WOTUS, so INGAA members' projects often require a Section 401 certification, which has broad applicability to a variety of infrastructure projects, including interstate natural gas pipelines, roads, electric transmission, hydroelectric transmission and flood control. Based on our experience, Section 401 works well in most States. Certain States have misused Section 401, however, to burden, delay, or outright veto critical energy infrastructure projects, namely natural gas pipelines. In so doing, those States disrupt the role of federal and state authorities, undermine the actions of other States and damage cooperative federalism.

Misuse of Section 401 has taken many forms. For example, States have denied certification for policy reasons other than protection of water quality. In addition, States have disregarded or circumvented the one-year time limit on review. Although pipelines can seek judicial review of a State's certification decision, projects cannot move forward while the pipeline appeals a denial, and the delay and uncertainty associated with litigation make it costly and time consuming. Indeed, judicial review of Section 401 certifications presents an additional obstacle to infrastructure development and in some instances, led to cancellation of projects even when the project developer was successful in the courts.

Actions by the Environmental Protection Agency (EPA) under the prior Administration compounded the uncertainty and risk created by States' misuse of Section 401. In 2023, the EPA rescinded a rule promulgated by the agency in 2020[1] to address misuse of Section 401 and replaced the rule with one that significantly expands the scope of Section 401 review to the activity as a whole rather than discharges from the point of discharge. This authorizes the certifying authority to potentially take an overly expansive analysis of the water quality impacts caused by other aspects of the project potentially unrelated to the discharge that triggered the certification requirement. INGAA maintains that the 2023 rule[2] exceeds EPA's authority under the CWA and affords States and Tribes significantly greater latitude

[1] https://www.federalregister.gov/documents/2020/07/13/2020-12081/clean-water-act-section-401-certification-rule

[2] https://www.epa.gov/cwa-401/final-2023-cwa-section-401-water-quality-certification-improvement-rule

to potentially deny Section 401 certifications to block essential infrastructure development on policy grounds unrelated to water quality.

INGAA members need regulatory certainty—consistent, legally sound "rules of the road"—to invest hundreds of millions of dollars in critical infrastructure projects. Persistent misuse of Section 401 and regulations that change wildly every few years undermine this certainty. We urge Congress to act to ensure that States adhere to their carefully defined role in the CWA's cooperative federalism framework and that a reasonable regulatory framework can survive longer than four years. Actions to clarify the scope of Section 401 review are of paramount importance. Specifically, we ask Congress to restore cooperative federalism by clarifying that:

- Section 401 authorizes States to review discharges into WOTUS, not the entire activity subject to federal authorization (including activities which occur in other states). This clarification would help ensure that states act within appropriate limits of their Section 401 authority and confirm compliance with federally approved water quality criteria as intended by the underlying statute.
- States must base their certification decisions on whether the discharge complies with the enumerated sections of the CWA, not compliance with other state laws or policies.

INGAA also urges Congress to address judicial review of Section 401 certification decisions so that there is an effective, efficient, and predictable process for appealing State determinations.

CWA SECTION 404 ENERGY INFRASTRUCTURE PERMITTING REFORMS.

Section 404 of the Clean Water Act (CWA) prohibits the discharge of dredged or fill material into waters of the United States, including wetlands, without authorization from the Secretary of the Army, acting through the Corps of Engineers. There are two types of authorization under Section 404.

First, Section 404 requires an individual permit for discharges with *potentially* significant impacts. The agency or a State or Tribe acting through a Corps-approved program—evaluates applications for an individual permit using a "public interest" standard and environmental criteria published by the EPA.

Second, Section 404 allows the Corps to establish a general permit that authorizes discharges that have *minimal* adverse environmental effects. The general permit reduces the length of review for discharges that have minimal effects and meet the strict set of conditions established in the permit. The CWA provides an additional limit on the use of a general permit: a district or division commander can revoke the nationwide permit in a state or other geographic region.

The Corps' most recent set of general permits[3] (Nationwide Permits (NWPs))—became effective on February 25, 2022, and will expire on March 14, 2026. The NWPs authorize discharges associated with a variety of industrial projects so long as those discharges meet each NWP's stringent criteria. For example, developers must notify the Corps of certain planned projects prior to construction, which provides the Corps an opportunity to determine the project's eligibility for the NWP program.

The Corps must maintain its NWP program to meet the United States' energy needs. To complete work on the pipeline network to deliver natural gas securely, reliably, and affordably, operators specifically rely on NWP 12, which authorizes discharges from utility lines crossing waters of the United States, including natural gas pipelines. Without NWP 12, it would be extremely difficult to complete myriad maintenance, repair, and modernization projects that must be done quickly to preserve the integrity and safety of our systems, including projects required by the Pipeline Safety Act and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Despite the agency's well-established, effective oversight process, the NWP program has been targeted in recent years with various stakeholders filing legal challenges and urging the prior Administration to revoke NWPs to hinder essential linear infrastructure projects. In 2022, the Administration launched an inquiry into whether "modifications or other future actions" with respect to NWP 12 were appropriate, creating significant uncertainty as to whether the Corps would maintain an effective NWP program moving forward.

Like planning under Section 401 under the Clean Water Act, pipelines need to know the "rules of the road" when investing substantial time and capital into the planning and completion of critical work their networks. We cannot afford regu-

[3] https://www.federalregister.gov/documents/2021/12/27/2021-27441/reissuance-and-modification-of-nationwide-permits

latory actions that cast doubt on the availability of the NWP program, which burdens the agency by increasing the need for individual permits for activities that have only minimal impact, and delays service to the public.

INGAA urges the Corps to reissue all NWPs prior to their scheduled expiration in March 2026. We also support additional action by Congress to protect the NWP program and promote regulatory certainty. Introduced in the 118th Congress, H.R. 7073, Creating Confidence in Clean Water Permitting Act, would extend the length of the Corps' general permits from five years to ten years. Additionally, H.R. 7023 would clearly define discharge activities within the Corps' CWA Section 404 authority. These commonsense changes would provide additional certainty for developers of *all* types of linear infrastructure, not just natural gas pipelines.

Thank you for your attention to these important matters. INGAA stands ready to work in a bipartisan manner to enact these CWA reforms and other durable permitting process improvements that enable development of the energy infrastructure to continue delivering the benefits of natural gas to the American people.

Sincerely,

AMY ANDRYSZAK,
President & CEO, Interstate Natural Gas Association of America.

Statement of the American Society of Civil Engineers, Submitted for the Record by Hon. Brad Knott

INTRODUCTION

The American Society of Civil Engineers (ASCE) appreciates the opportunity to submit a statement to the House Committee on Transportation & Infrastructure's Subcommittee on Water Resources and Environment for its hearing on permitting regulations under the Clean Water Act. We are grateful to Subcommittee Chairman Mike Collins and Ranking Member Frederica Wilson for holding this hearing on this important subject.

Founded in 1852, ASCE is the nation's oldest civil engineering society. ASCE represents more than 160,000 members of the civil engineering profession in 177 countries. As the professionals who design, construct, and maintain critical aspects of the United States' water resources, ASCE welcomes the opportunity to offer perspective on the important subject of Clean Water Act permitting and project delivery.

ASCE's 2021 Infrastructure Report Card

Our nation's infrastructure is the foundation that connects our businesses, communities, and people. It serves as the backbone of the U.S. economy, and is critical to the nation's public health, safety, and welfare. Every four years, ASCE publishes the *Report Card for America's Infrastructure*, which grades 17 major infrastructure categories using a simple A to F school report card format. In 2021, the nation's clean water infrastructure, comprised of stormwater and wastewater infrastructure, received grades of D and D+ respectively. **On March 25, 2025, ASCE will release the *2025 Report Card for America's Infrastructure***. The 2025 Report Card will provide an updated snapshot of the nation's stormwater and wastewater infrastructure and note areas of progress and ongoing challenges that have been observed over the past four years.

Reauthorization of the Clean Water Act

For more than 50 years, the Clean Water Act (CWA) has provided a foundation for ensuring that the nation's waterways are fishable and swimmable. Since this landmark law was passed in 1972, the CWA has prevented 700 billion pounds of pollutants from contaminating the nation's waterways annually, significantly slowed the loss of America's wetlands, and has helped generate billions of dollars in economic activity through industries such as fishing and recreation.[1] Under the CWA, critical tools like the Clean Water State Revolving Fund (CWSRF) program were created and have provided billions of dollars to states and communities to support low interest loans for upgrades to wastewater and stormwater infrastructure. Continued support for the CWA is critical to ensuring that America's waterways are free of pollution and do not pose health and safety risks to the public.

ASCE recognizes the critical importance of providing proper balance between timely permitting for infrastructure projects and mitigating and preventing harmful

[1] https://www.nwf.org/-/media/Documents/PDFs/NWF-Reports/2022/Five-Decades-of-Clean-Water1

effects to the environment. ASCE strongly believes that reforms to permitting processes should focus on using the best available science to make objective determinations on environmental impacts while streamlining permitting and approval decisions to reduce delays to critical infrastructure projects.

To better protect the health and beneficial use of the nation's waters, ASCE supports and encourages the reauthorization of the Clean Water Act.[2] Amended several times since becoming law in 1972, the CWA has not received Congressional reauthorization since the Water Quality Act of 1987, which included, among other provisions, the creation of the CWSRF to support low interest financing for stormwater and wastewater infrastructure capitalization projects.

Reauthorization would provide more consistent access to federal appropriations, creating greater certainty and planning ability for infrastructure development. It should also take a stronger approach to non-point source pollution, a leading cause of water quality challenges, and incorporate a watershed approach which recognizes the connectivity of water systems across geographical and political boundaries and brings a wide range of voices and perspectives to the table.

ASCE also encourages any CWA reauthorization be accompanied by the development of nationwide best practices supporting sustainable and consistent approaches to protection of waters which are also mindful of the need to minimize timing of regulatory processing and associated costs.

Addressing Non-Point Source Pollution

One of the most important functions of the Clean Water Act is the prevention and mitigation of point-source pollution in the nation's waters. Point-source pollution is pollution originating from a distinct and identifiable source, such as a pipe leak, runoff from sewage treatment plants, and discharge from factories and other industrial facilities. However, ASCE supports the development of more aggressive efforts under the CWA to address non-point source pollution, which is pollution originating from more discrete sources such as urban and road runoff, agricultural activity, and mine runoff. Non-point source pollution has been identified as the leading remaining contributor to water quality issues, creating harmful effects for drinking water supplies, fisheries, and recreation.[3] ASCE supports efforts to prevent and mitigate non-point source pollution through a variety of methods. These include the development of regulations and mechanisms requiring mitigation of the impacts of non-point source pollution, increased funding for research into the impact of non-point source pollution on surface water and groundwater, and improving sustainable best management practices.[4]

Watershed Approach

ASCE strongly believes that the most effective way to protect the nation's waters, including the mitigation of non-point source pollution, is through a watershed approach. This approach focuses on water quality and quantity and considers the connectivity of all systems. It acknowledges the overlapping nature of systems which cross political and geographical lines and brings all stakeholders from the public and private sectors to the table. This also allows for the incorporation of local and regional viewpoints into planning and decision-making processes.[5]

Conclusion

ASCE greatly appreciates the opportunity to provide the Water Resources and Environment Subcommittee with comments on this critical issue. One of ASCE's primary policy goals is supporting proper balance between timely and efficient infrastructure development as well as reducing and mitigating harmful effects to the environment. We look forward to working with the committee on how best to address these issues throughout the 119th Congress.

Statement of the Western States Water Council, Submitted for the Record by Hon. Brad Knott

On behalf of the Western States Water Council (WSWC), we wish to express our appreciation for the opportunity to provide written testimony on Clean Water Act (CWA) Permitting and Project Delivery. The WSWC is a bi-partisan government entity created by Western Governors in 1965, representing eighteen states. Our mem-

[2] https://www.asce.org/advocacy/policy-statements/ps420---clean-water-act-reauthorization
[3] https://www.epa.gov/nps/basic-information-about-nonpoint-source-nps-pollution
[4] https://www.asce.org/advocacy/policy-statements/ps461---non-point-source-pollution
[5] https://www.asce.org/advocacy/policy-statements/ps422---watershed-management

bers are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future. The WSWC has long supported legislation that addresses needs related to the challenges of aging and inadequate infrastructure, while ensuring a reliable and secure water supply. The WSWC also has a long history of involvement in discussions between states and the federal government related to CWA Sections 401, 402, and 404, including state permitting authorities and jurisdiction over waters of the States and waters of the United States (WOTUS).

Water in the West is a limited resource. Water must be recognized as a critical public policy priority given the importance of the resource to our public health, economy, food security, environment, and the western way of life. We must cultivate a western water conservation ethic through a greater understanding of and appreciation for water's value. A secure and sustainable water future will be determined by our ability to maintain, replace, expand, and make the most efficient use of critical water infrastructure. Sustainable water resource management should enhance the protection and restoration of significant aquatic ecosystems and improve economic and environmental security.

The West and the Nation depend on an intricate and aging system of weirs, diversions, dams, reservoirs, pipelines, aqueducts, pumps, canals, laterals, drains, levees, wells, stormwater channels, and water and wastewater treatment and hydroelectric power plants. Substantial and sustained investments in water project construction, maintenance, rehabilitation, and replacement are necessary and pay long-term dividends to the economy, public health and safety, and the environment. The federal government has a significant role in financing and cost-sharing for water-related infrastructure, given federal economic and environmental objectives, federal tribal trust and treaty obligations, past commitments, and federal regulatory mandates. See WSWC positions #481, #486, #519, and #521—Resolutions Summary, Western States Water Council.

The CWA Section 101(b) expressly recognizes, preserves, and protects "the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources. . . . " and Section 101(b)(7) commits resources "to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution."

CWA Section 101(g) further provides that the primary and exclusive authority of each state to "allocate quantities of water within its jurisdiction shall not be superseded, abrogated, or otherwise impaired by this Act."

STATE CERTIFICATIONS (CWA 401)

The Western States strongly support the planning and development of critical infrastructure and streamlined permitting processes, but such efforts should not come at the expense of States' authority to allocate, manage, and protect their water resources. The Council supports a balanced and integrated approach to achieve water and energy policy goals that plans for the future in sustainable ways, and recognizes legitimate state water resource and water quality management, protection, and planning authorities to balance competing water uses. The development of hydropower and other federally permitted and licensed projects involving activities that may impact states' water quality standards should be appropriately undertaken in compliance with substantive and procedural state water law and delegated authority under CWA Section 401.

States have responsibly exercised their delegated authority under the CWA Section 401 and under state water quality statutes to protect water quality, and they must consider proposed activities and discharges in light of the States' designated water uses and related water quality standards. An overly narrow reading of Section 401 would deprive the States of the ability to maintain the very beneficial uses that the CWA was designed to protect, and would threaten the existing partnership between state and federal agencies based on cooperative federalism.

CWA Section 401 certification denials by states are rare and carefully considered, and are not examples of the failure of the system, as the process has been historically well-understood, reliable and supported by case law that provides certainty for both state and federal agencies, and the regulated community. The vast majority of Section 401 certification requests are processed by States within 90 days, well within the one year allowed by current law, with relatively little if any backlog of certifi-

cation actions. Most delays are typically due to submission of an incomplete application, applicants' non-responsiveness to requests for additional information, the completion of necessary study requirements, the size and complexity of some projects (and related impacts), substantive changes to the proposed project requiring further review, or constraints on state resources.

Substantial and recurring changes to regulatory definitions, policies, and programs between federal Administrations create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits.

Actions taken by the federal government under the 2020 CWA Section 401 Certification Rule (85 FR 42210) caused some Western States to issue an increased number of denials, due to inflexible deadlines that did not accommodate state public engagement laws or allow sufficient time to gather adequate information on project impacts. The 2020 rule revision led to federal agencies waiving reopener conditions in nationwide permits imposed on federal projects by States under CWA Section 401, inconsistent with CWA Sections 101(b) and 101(g), Section 27 of the Federal Power Act, and the Supreme Court ruling under *P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology*.

The 2023 CWA Section 401 Water Quality Certification Improvement Rule (88 FR 66558) identified 16 national parks that EPA declared to be "lands of exclusive federal jurisdiction" and asserted that EPA is the Section 401 certifying authority in those parks, although States have been the certifying authority in some of those parks for decades.

The WSWC strongly supports early state engagement in federal permitting and licensing actions and the coordination of state and federal environmental requirements and review processes for critical infrastructure without diminishing state authority. WSWC encourages EPA to consult with affected states regarding certifying authority in national parks designated as "lands of exclusive federal jurisdiction" in order to resolve any jurisdictional disputes in a manner that upholds the CWA's direct grant of Section 401 certifying authority to States and its intent to empower States to protect water quality within their boundaries.

The WSWC supports any changes that strengthen the deference to state water laws and do not diminish the primary state authority and responsibility for the appropriation, allocation, development, conservation, and protection of their water resources, including minimum streamflows, and the protection of water quality and designated uses.

In 1994, the U.S. Supreme Court issued a 7–2 decision declaring that minimum streamflow requirements are a permissible condition of CWA Section 401 certifications. A Washington city and local utility district sought a license to build a hydroelectric project on the Dosewallips River. The proposed project would reduce the water flow below the state's minimum stream flow requirement to protect fish habitat, a state designated use of the water under Section 303 of the CWA. The Washington Department of Ecology issued a Section 401 certification imposing a minimum stream flow requirement as a condition of the hydropower license, and the applicants objected to the state's authority to impose water flow requirements.

In *P.U.D. No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), the Court upheld a state's authority to impose conditions under the Section 401 certification process where necessary to protect a designated use for fish habitat. The Court rejected the argument that water quality requirements were limited to discharges under the CWA, noting that Washington's instream flow requirement was necessary to enforce the designated use of the river. The Court said that the CWA preserves each state's authority to allocate water quantity between users and does not limit Section 401 to water quality concerns when protecting designated uses. Importantly, the Court also rejected an effort to read "implied limitations" into Section 401 based on a perceived conflict between Section 401 state certifications and FERC authority under the Federal Power Act and the interpretation in *First Iowa Hydro-Electric Cooperative v. FPC*, 328 U.S. 152 (1946).

Again in 2006, the Supreme Court recognized that State 401 certification authority is " . . . essential in the scheme to preserve state authority to address the broad range of pollution." *S.D. Warren Co. v. Maine Board of Environmental Protection*, 547 U.S. 370 (2006), citing 116 Cong. Rec. 8984 (1970).

NPDES Permits and Water Transfers

The CWA prohibits discharging "pollutants" through a "point source" into a "water of the United States" without first obtaining a National Pollutant Discharge Elimination System (NPDES) permit. The permit includes limits on what can be

discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not violate state water quality standards.

EPA in 40 CFR Part 122.3(i) expressly excluded water transfers from regulation under the NPDES permitting program, and defined a water transfer as an activity that conveys or connects waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use. The rule relies on EPA's CWA interpretation and does not limit any ability of a State to use any available authority, including authority regarding nonpoint sources of pollution, to protect the water quality of the receiving water body in a water transfer.

Water transfers and water quality are essential to the social, economic and environmental well-being of the Western States. The United States Court of Appeals, in the cases of *Friends of the Everglades v. South Florida Water Management Dist*., 570 F.3d 1210 (11th Cir. 2009), and *New York State et al. v. Environmental Protection Agency*, 846 F.3d 492 (2nd Cir. 2017), upheld EPA's Water Transfer Rule, holding it to be a reasonable construction of the CWA and therefore entitled to deference by the Federal Courts and on which decisions the United States Supreme Court subsequently denied Petitions for Writ of Certiorari.

The WSWC supports EPA's amendment to its CWA regulations in 40 CFR 122.3(i) and supports the codification of 40 CFR 122.3(i) into statute by Congress. The WSWC has long declared its position that the transport of water through constructed conveyances to supply water for various uses without the "addition" of a pollutant should not trigger federal NPDES permitting requirements, simply because the transported water contains different chemical concentrations and physical constituents. The WSWC supports the ability of each Western State to use available authorities to place appropriate conditions on water transfers to protect water quality. With few exceptions, States have been delegated full or partial federal authority to administer the NPDES program and issue permits. Moreover, regardless of the extent of federal jurisdiction over waters of the United States, States have authority to protect their waters of the State, including any waters that may not fall under CWA delegated NPDES permitting authority.

WATERS OF THE UNITED STATES (WOTUS)

The CWA is built upon the principle of cooperative federalism in which Congress intended the States, the EPA, and the U.S. Army Corps of Engineers (USACE) implement the CWA as partners, delegating co-regulator authority to the States. This cooperative federalism framework has resulted in significant water quality improvements since the law's enactment in 1972, and Western States have made great strides in protecting water quality and coordinating water quality and water quantity decisions. It is imperative that EPA and USACE actively seek meaningful state consultation, engagement, and participation in the review and development of any new proposed or final rule to define WOTUS. States are best positioned to manage the water within their borders because of their on-the-ground knowledge of the unique aspects of their hydrology, geology, and legal frameworks.

States have both state statutory and constitutional authority pursuant to their "waters of the state" jurisdiction to protect the quality of waters within their borders, and such jurisdiction generally extends beyond the limits of federal jurisdiction under the CWA. Again, CWA Section 101(b) supports the States' critical role in protecting water quality as Congress explicitly declared that it did "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution." The Supreme Court has limited the jurisdictional scope of the CWA in *U.S. v. Riverside Bayview Homes, Inc*., 474 U.S. 121 (1985); *Solid Waste Agency of Northern Cook County (SWANCC) v. Corps*, 531 U.S. 159 (2001); *Rapanos v. United States*, 547 U.S. 715, 723 (2006); and *Sackett v. EPA* (#21–424).

Perennial streams with a relatively permanent surface water connection to navigable waters are presumptively considered to be under federal CWA jurisdiction consistent with *Rapanos* and Justice Scalia's plurality opinion. In *Sackett*, the Court affirmed the phrase "waters of the United States" includes only relatively permanent, standing, or continuously flowing bodies of water.

A one-size-fits-all national approach to federal regulations, guidance, and programs pertaining to the CWA does not recognize specific conditions and needs in the West, where water and precipitation can be scarce and a variety of unique waterbodies exist, including small ephemeral washes and arroyos, snow dependent intermittent streams, effluent dependent and dominated streams, prairie potholes, playa lakes, and terminal lakes, as well as numerous man-made reservoirs, impoundments, and water and stormwater conveyance structures. Further, there are physical, biological, and chemical differences between waters, and hydrologic dif-

ferences, both spatially and temporally, as well as considerable differences in legal doctrines that govern water in Western States, which mean that federal effort to clarify CWA jurisdiction will inevitably impact each State differently, thus underscoring the need to thoroughly involve States in developing and implementing any rule so as to clearly respect and avoid conflict with state authority over the regulation of water quality and the allocation of waters and water rights within their respective borders

Any efforts to redefine or clarify CWA jurisdiction have, on their face, numerous federalism implications that have the potential to significantly impact States and alter the distribution of power and responsibilities among the States and the federal government. As co-regulators, States are separate and apart from the general public, and have a unique role with the federal government in the development and implementation of any rule to clarify or redefine CWA jurisdiction. Information-sharing does not equate to meaningful consultation, and the uncertainty and differences of opinion that exist regarding CWA jurisdiction requires EPA and the USACE to develop and implement federal CWA jurisdiction efforts in authentic partnership with the States. Uncertainty and differences of opinion have and continue to exist regarding CWA jurisdiction among States, and challenge EPA and the Corps to develop and implement any new rule in cooperation with the States, based on principles of cooperative federalism, and together to provide greater certainty and a clearer definition of the limits of federal jurisdiction.

As noted above, substantial and recurring changes to regulatory definitions, policies, and programs between federal Administrations create uncertainty for co-regulators and the regulated community, often leading to unreliable results, indecision, inconsistency, and lawsuits. Congress and this Administration should ensure that any federal effort to clarify or define CWA jurisdiction and define Waters of the United States:

1. Creates an enduring and broadly supported definition.
2. Acknowledges and addresses the needs, priorities, and concerns of states as co-regulators.
3. Includes robust, meaningful, and representative state participation and consultation in the development and implementation of any rule, acknowledging the inherent federalism implications.
4. Gives full force and effect to Congress' intent to maintain a reasonable balance of state and federal authority and the purposes of CWA Sections 101(b) and 101(g).
5. Complies with the limits set by Congress as interpreted by the Supreme Court, and appropriately incorporates those limits.
6. Specifically identifies waters and features outside the scope of the CWA jurisdiction including but not limited to groundwater and historically recognized agricultural exemptions.
7. Acknowledges that States have authority to protect all "waters of the state," and that excluding waters from federal jurisdiction does not always mean that they will be exempt from state regulation and protection.
8. Continues to provide access to appropriate technical and financial assistance to the states to protect and improve water quality under existing EPA programs without regard to jurisdictional determinations.
9. Provides a clearly delineated process for resolving differences of opinion over federal and non-federal jurisdiction, and jurisdiction between different States and Tribes (treated as states).
10. Provides for mapping of jurisdictional waters as a joint federal/state/tribal effort employing the best available data and tools, with appropriate provisions and processes for map maintenance.
11. Includes an appropriate delay in the effective date of any new rule or otherwise allows for a transition enabling states to take such actions as may be necessary to address any gaps in state law, regulation and protection, and to ensure sufficient time for tools to be developed by federal agencies, in collaboration with states, that facilitate implementation of the new rule.
12. Recognizes the need to balance definitional clarity with flexibility in implementation to address the unique landscapes, flow regimes, and legal frameworks in various regions of the Nation and appropriately weighs all factors of science, law, and effective policy to draw jurisdictional conclusions that are appropriate, and that do not impinge on the rights of States.
13. Considers a regional approach to the definitions of terms for foundational and any categorical waters in the rule and defines regions building upon existing classification systems based on hydrology, geology, and climate.
14. Provides, in the rule development process, a representative number of states, as co-regulators, with diverse perspectives and regions to engage actively in

an integrated way with the EPA and Corps staff to provide direct and effective feedback on the implementability of a proposed rule which requires ample time for development of new regulatory language.

EPA VETO AUTHORITY (CWA 404(C))

EPA's actions in the Section 404 permitting process have not always been consistent with established protocols, creating challenges for States' engagement and public and private investment in projects requiring Section 404 permits.

CWA Section 404(c) grants the EPA Administrator the power "to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and ... deny or restrict the use of any defined area ... as a disposal site, whenever he determines ... that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas."

In 1992, as directed by CWA Section 404(q), EPA and USACE executed a Memorandum of Agreement ("1992 MOA") that bound the two agencies to specific procedures for resolving potential disagreements, including "elevation of specific individual permit cases ... that involve aquatic resources of national importance."

WSWC supports the promulgation of regulations and guidance: (1) improving predictability in Section 404 permitting, specifically the 404(c) and 404(q) processes; (2) improving communication between federal agencies and States, particularly providing States with a meaningful opportunity to address EPA concerns prior to the exercise of its veto power; and (3) requiring EPA to adhere to established Section 404 permitting processes and protocols, and to update those protocols as appropriate to reflect current procedures.

WSWC also supports documentation of the rationale for any Section 404(c) veto, including: (1) verification that impacted waters are Waters of the United States; (2) findings from any Final Environmental Impact Statement pertaining to the proposed project; (3) impacts to municipal water supplies, shellfish beds, fishery areas, wildlife, and recreational areas; and (4) resolved issues emanating from discussions between the USACE and EPA.

Thank you for the opportunity to submit our written testimony.

Letter of February 11, 2025, from the Waters Advocacy Coalition, to Hon. Mike Collins, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Brad Knott

FEBRUARY 11, 2025.

The Honorable MIKE COLLINS,
Chairman,
Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.

The Honorable FREDERICA S. WILSON,
Ranking Member,
Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN COLLINS AND RANKING MEMBER WILSON:

The Waters Advocacy Coalition (WAC) applauds your leadership in holding today's hearing on "America Builds: Clean Water Act Permitting and Project Delivery." WAC represents a large and diverse cross-section of the nation's broad business community, including the construction, transportation, real estate, mining, manufacturing, forestry, agriculture, energy, wildlife conservation, and public health and safety sectors. Our members are vital to building a thriving national economy and are essential to achieving the nation's critical infrastructure, manufacturing, supply chain, transportation, and energy goals.

Our members operate their businesses in compliance with a comprehensive framework of federal and state laws, regulations, and policies. They regularly obtain federal Clean Water Act (CWA) permits, including dredge and fill permits from the U.S. Army Corps of Engineers under CWA section 404 and discharge permits from the U.S. Environmental Protection Agency and state permitting authorities under CWA section 402. Many of our members also conduct activities under the Corps' Nationwide Permit program, which provides an important option to expedite projects that have lower environmental impact. We therefore have a significant interest in

the Committee's work to address CWA permitting and project delivery challenges and opportunities.

For many of our members, CWA permitting can be a major hurdle in moving essential projects forward efficiently. We appreciate the Committee's work to address these challenges and ensure that essential projects are not hindered by bureaucratic delays or uncertainties, while supporting the CWA's cooperative federalism framework, environmental protection, and the need for a more streamlined, predictable regulatory framework.

We look forward to working with you to identify opportunities for targeted reforms that will help achieve our nation's ambitious national priorities and support the communities that depend on these projects.

Sincerely,

AMERICAN EXPLORATION & MINING ASSOCIATION.
AMERICAN FARM BUREAU FEDERATION.
AMERICAN ROAD AND TRANSPORTATION BUILDERS ASSOCIATION.
ASSOCIATED BUILDERS AND CONTRACTORS.
ASSOCIATED GENERAL CONTRACTORS OF AMERICA.
LEADING BUILDERS OF AMERICA.
LIQUID ENERGY PIPELINE ASSOCIATION.
NATIONAL CLUB ASSOCIATION.
NATIONAL ASSOCIATION OF HOME BUILDERS.
NATIONAL ASSOCIATION OF REALTORS.
NATIONAL MINING ASSOCIATION.
NATIONAL ASPHALT PAVEMENT ASSOCIATION.
NATIONAL STONE, SAND & GRAVEL ASSOCIATION.
THE FERTILIZER INSTITUTE.
RISE (RESPONSIBLE INDUSTRY FOR A SOUND ENVIRONMENT).
SOUTHEASTERN LUMBER MANUFACTURERS ASSOCIATION.

cc: Members of the Committee on Transportation and Infrastructure

Letter of February 11, 2025, from Aurelia S. Giacometto, Secretary, State of Louisiana, Department of Environmental Quality, to Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Brad Knott

STATE OF LOUISIANA,
DEPARTMENT OF ENVIRONMENTAL QUALITY,
OFFICE OF THE SECRETARY,
FEBRUARY 11, 2025.

Committee on Transportation and Infrastructure,
Subcommittee on Water Resources and Environment,
U.S. House of Representatives, 2165 Rayburn House Office Building, Washington, DC 20515.

Re: America Builds

DEAR CHAIRMAN GRAVES, CHAIRMAN COLLINS, AND RANKING MEMBERS:

I understand that the House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment is interested in confronting challenges with Clean Water Act (CWA) permitting and encouraging federalism in environmental protection. I am pleased to provide Louisiana's experience and perspective as it relates to the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers implementation of CWA Section 404. Louisiana is committed to protecting the quality of our waters. At the same time, we are committed to fairness in permitting, economic progress, and natural resource development. I believe Congress intended that the States would play a critical role in implementing the CWA within their states. I look forward to working with the Committee to improve the federal-state partnership established under the CWA cooperative federalism framework.

CWA SECTION 404 PERMITS:

As a primacy state, Louisiana's Department of Environmental Quality authorizes over 30,000 environmental permits per year. Currently, the U.S. Army Corps of Engineers implements the CWA Section 404 program in the state. Unfortunately, federal agency overreach through the Section 404 program interferes with the ability of states to determine economic activity within our borders. Two recent examples illustrate my concerns.

1. Corps use of National Historic Preservation Act Section 106 review to delay permits.

In the context of reviewing a CWA Section 404 permit application for development of a large-scale grain elevator and associated infrastructure, on June 10, 2024, the U.S. Army Corps of Engineers requested a determination of eligibility from the Keeper of the National Register of Historic Places under the 36 C.F.R. Part 800 regulations. At the urging of environmental advocates, the Corps request included a huge swath of land within the State, over 22,000 acres, far beyond the area of permitted effects identified by the Corps during review of the permit. After prolonged delay, the applicant withdrew the permit and requested that the Keeper suspend review of the Corps request due to the absence of any proposed federal action and no potential effect to historic resources.

Without any jurisdiction or authority, on Oct 16, 2024, the Keeper issued a determination finding the entire area eligible for listing. The Keeper noted that "the Section 106 consultation has since been terminated because the applicant has withdrawn its permit request, but the Army Corps has stated . . . that it is still requesting this determination on eligibility." Going forward, any development within the 22,000 acre boundary must fully comply with the NHPA Section 106. The Corps illegal and overreaching actions were intended to stop all project development within a substantial area of Louisiana, amounting to federal zoning within our State.

2. EPA's weaponization of regulations implementing Title VI of the Civil Rights Act.

Under the Biden administration, EPA has taken unprecedented steps to use EPA's Title VI regulations to leverage states to include conditions on or preclude permitting altogether under the guise of preventing "disparate impacts." EPA's regulations, 40 C.F.R. Part 7, prohibit actions that "have or may have the effect of subjecting a person to discrimination." However, the Supreme Court clarified that Title VI only prohibits intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280–81 (2001). The Court expressed skepticism on the validity of EPA's regulations. *Id*. at 282. Last year, a federal court in Louisiana enjoined EPA from enforcing its regulations against the State of Louisiana, finding Title VI has no disparate impact language, only intentional discrimination is prohibited. *Louisiana v. EPA*, No. 2:23-cv-692, 2024 WL 250798 (W.D. La. Jan. 23, 2024). The Court found that EPA has weaponized Title VI as a blanket grant of authority to veto permitting decisions and that the regulations require decision-makers to evaluate the racial outcomes of their policies and to make decisions on those racial outcomes. While limiting the decision to Louisiana, Judge Cain cast doubt on the legality of EPA's regulations in any state. Twenty-three states, Louisiana included, requested the EPA amend its regulations to bring them in line with the text of the statute and with the Equal Protection Clause of the U.S. Constitution. Congress should ensure EPA complies with the States' request.

CWA Section 404 Program Assumption

The CWA Section 404 program remains one of the widely misused federal environmental permitting programs. It is for this reason that Louisiana, among several other states, has expressed interest and even taken steps toward assuming permitting responsibility. On December 18, 2024, EPA published a final rule revising the regulations governing State and Tribal assumption of the CWA section 404 permitting program. Unfortunately, that rule raises several concerns, particularly with EPA's oversight of compliance with CWA 404(b)(1) and determining the list of waters that would be retained as federally regulated waters. As written, the final rule will do little to motivate states to seek assumption. Congress should require EPA to withdraw that rule and publish a new rule that reflects state input.

I appreciate the opportunity to provide the Department's view on these important permitting issues.

Sincerely yours,

Aurelia S. Giacometto,
Secretary, State of Louisiana, Department of Environmental Quality.

Letter of February 11, 2025, from Kristen Swearingen, Vice President, Legislative and Political Affairs, Associated Builders and Contractors, to Hon. Mike Collins, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Brad Knott

FEBRUARY 11, 2025.

The Honorable MIKE COLLINS,
Chairman,
Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, U.S. House of Representatives, Washington, DC 20515.

The Honorable FREDERICA S. WILSON,
Ranking Member,
Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN COLLINS, RANKING MEMBER WILSON AND MEMBERS OF HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE'S SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, thank you for holding the hearing, "America Builds: Clean Water Act Permitting and Project Delivery." ABC members play a significant role in building America's infrastructure and seek to inform the committee of legislative opportunities to responsibly streamline CWA Section 404 permitting by eliminating persistent statutory barriers to state assumption.

Section 404 prohibits the deposition of dredge or fill material into the waters of the United States without a permit. The U.S. Army Corps of Engineers exclusively administers Section 404 in every state except Michigan and New Jersey. Completion of the USACE Section 404 permitting process averages nearly 800 days and nearly $300,000 in applicant administrative costs per permit, frustrating action on America's critical housing and infrastructure priorities.

The recent divestiture in federal court of Florida's Section 404 authority exemplifies persistent statutory barriers to state implementation, contrary to the CWA's explicit preservation of states' "primary responsibilities and rights" to ensure the integrity of water resources. Improving the statutory framework would eliminate duplicative permitting, achieve decisional consistency, and promote transparency by reducing points of contact for permittees. For example, at the time of Florida's Section 404 assumption, Florida's state-administered wetland program covered 86% of waters subject to concurrent USACE permitting, and permitted in 17 days the same activity in the same waterway that USACE permitted in 300 days.

Congress should enact amendments consistent with the following recommendations to simplify Section 404 assumption and vest states with the authority to exert the superior efficiency, consistency, and transparency achievable via localized administration of wetland permitting.

- *Authorize Endangered Species Act Section 7 liability protection to flow through state or tribal Section 404 enforcement agencies*: Congress should allow states to secure Endangered Species Act Section 7 incidental take permits covering all state-administered Section 404 program permittees, subject to adequate state regulatory provision for subsequent species- and site-specific U.S. Fish and Wildlife Service or National Marine Fisheries Service determinations.

- *Authorize states and tribes that assume Section 404 authority to issue permits of equivalent duration to USACE Section 404 permits*: Congress should ensure parity in the duration of permits issuable by USACE and state authorities by substituting the present five-year lifetime of state-issued permits under Section 404 with provision that state permits may not exceed statutory or regulatory limitations governing the duration of permits issued by USACE.

- *Clarify that states and tribes may assume authority to issue Section 404 permits for discharges into a portion of assumable waters*: Congress should eliminate the current "all or nothing" assumption framework and afford states latitude to administer permitting for those activities and assumable waters they are best equipped to manage.

- *Authorize expenditure of EPA Wetland Development Grant Program funding to offset continuing state Section 404 implementation costs by supplementing state fee-for-service revenues*: In view of the potential for wider Section 404 assumption to relax demands on federal personnel and resources, Congress should at minimum eliminate present obstacles to expenditure of existing federal funding

for state water quality programming on continuing administration of assumed programs.

ABC appreciates the opportunity to comment on today's hearing and looks forward to working with the committee during the 119th Congress.

Sincerely,

KRISTEN SWEARINGEN,
Vice President, Legislative and Political Affairs,
Associated Builders and Contractors.

Letter of February 11, 2025, from Amanda E. Eversole, Executive Vice President and Chief Advocacy Officer, American Petroleum Institute, to Hon. Mike Collins, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Mike Collins

FEBRUARY 11, 2025.

The Honorable MIKE COLLINS,
Chair,
Subcommittee on Water Resources and Environment, 2165 Rayburn House Office Building, Washington, DC 20515.

The Honorable FREDERICA WILSON,
Ranking Member,
Subcommittee on Water Resources and Environment, 2165 Rayburn House Office Building, Washington, DC 20515.

DEAR CHAIRMAN COLLINS AND RANKING MEMBER WILSON:

The American Petroleum Institute (API) writes regarding the upcoming Water Resources and Environment Subcommittee Hearing: "*America Builds: Clean Water Act Permitting and Project Delivery*" on Tuesday, February 11, 2025.

API is committed to meeting the challenge of providing affordable and reliable energy while continuing to reduce emissions. As the leading trade association representing the entire value chain of the U.S. oil and natural gas industry, API supports policies that strengthen our nation's energy security and economy and protect our environment. Permitting reform, including changes to the Clean Water Act, is essential to unlocking investments in the infrastructure we need to build to unleash American energy.

Investments to modernize infrastructure, including expanding current pipeline capacity and building new capacity, can help ensure that energy remains affordable for American consumers, create good-paying jobs, give U.S. manufacturers a competitive advantage through lower energy and raw material costs, and provide revenue to local, state and federal governments. Yet, decades-long challenges with the existing permitting process have hampered the development of critical infrastructure projects and jeopardized American energy security.

Many of those permits are issued at the state or federal level under the Clean Water Act (CWA) when a project may impact navigable waters. The permitting process can take years, and those delays can lead to skyrocketing project costs or even cancellation. Last Congress, this committee passed two bills—H.R. 1152 and H.R. 7023—that would have made meaningful reforms to the CWA to create a more conducive environment for moving critical projects forward.

H.R. 1152 would have helped ensure that water quality certifications reviewed and issued by states, tribes or EPA under Section 401 are limited to direct water quality impacts from point source discharges to navigable waters and are not be used by certifying agencies as a de facto veto of critical energy projects. H.R. 7023 would have codified the Nationwide Permit (NWP) Program under Section 404 to ensure the ongoing viability of the program for linear infrastructure projects and extended the reissuance period to provide greater regulatory certainty. We are pleased to see the committee revisit this important topic this Congress and hope to see legislation reintroduced that aligns with the following recommendations for CWA permitting reform:

Section 401:

- *Clarify that it applies only to federal activity*—Need for certification arises only when a federally licensed or permitted activity has the potential to result in a discharge from a point source into a "water of the United States."
- *Scope of reviews*—Certification review is limited to assuring that a discharge from a Federally licensed or permitted activity will comply with water quality

requirements. Certification review shall not include review of other sources, indirect impacts, and/or the "activity as a whole."
- *Start of the clock*—Certification review period commences upon the date of the certifying authority's receipt of a request for certification, and this review period cannot exceed one year, as specified in the statute.
- *Prohibit withdrawal / resubmit*—Certifying authorities should not be allowed to restart the one-year time review requirement solely by recommending withdrawal and/or resubmission of applications.
- *Clear application requirements*—Require states to publish requirements for certification requests and require states to notify applicants within 30 days of receipt of application whether the states have all the materials needed to process a certification request.
- *Determinations*—Final decisions on whether to grant, grant with conditions or deny a request for certification must be in writing and based only on local water quality reasons, and certifying authorities must provide rationale for decision.
- *Conditions*—Each certification condition should be supported by an explanation for why the condition is necessary to certify compliance with water quality requirements and supported with a citation to applicable legal requirements that protect water quality.

Section 404:
- *NWP renewals*—Extend the reissuance cycle for NWPs from five to ten years, which would help provide increased regulatory certainty for project developers and avoid potential disruption to critical infrastructure projects.
- *Confined EPA Authority*—Ensure that EPA does not pre-emptively bar potential activities requiring a CWA Section 404 permit before there is an applicant or a project; for EPA to make a veto determination under 404(c), an entity must apply for an actual Section 404 permit with the Corps.
- *One NWP*—To help ensure predictability for project developers, clarify that one linear project can be authorized under one NWP, even if there are multiple owners or developers and even if there are multiple crossings of the same water body in different places or multiple water bodies in the same location.
- *Consultation*—Because the Corps' issuance and reissuance of NWP 12 is limited to only those activities that have "no effect" on listed species or designated critical habitat, clarify that consultation under the Endangered Species Act is not required.
- *Use for oil / pipelines*—Ensure that the Administration maintains NWP 12 for activities associated with oil and natural gas pipelines that do not result in the loss of greater than ½ acre of Waters of the United States for each single and complete project.
- *Judicial review*—Include a provision to ensure that an action seeking judicial review of an individual or general permit under section 404 must be filed no later than 60 days from the date the permit is issued. In addition, ensure that if a federal court remands or vacates a permit under section 404, the issuer of the permit must act on the remand or vacatur no later than 180 days from the date the permit is remanded or vacated. In addition, ensure that those permits already approved as of the date of enactment are not subject to challenge.

Applying these reforms to Section 401 and 404 of the CWA would help create a more conducive environment for moving critical projects forward by providing a more transparent, timely and consistent process.

API looks forward to working with Congress to advance meaningful bipartisan permitting reform this year.

Sincerely,

AMANDA E. EVERSOLE,
Executive Vice President and Chief Advocacy Officer,
American Petroleum Institute.

CC: The Honorable Sam Graves, Chair, House Committee on Transportation and Infrastructure
The Honorable Rick Larsen, Ranking Member, House Committee on Transportation and Infrastructure

Letter of February 11, 2025, from Rich Nolan, President and Chief Executive Officer, National Mining Association, to Hon. Mike Collins, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Mike Collins

FEBRUARY 11, 2025.

The Honorable MIKE COLLINS,
Chairman,
Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.

The Honorable FREDERICA S. WILSON,
Ranking Member,
Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN COLLINS AND RANKING MEMBER WILSON:

On behalf of the National Mining Association (NMA) and our nearly 280 member companies and organizations, I applaud your leadership in holding today's hearing on "America Builds: Clean Water Act Permitting and Project Delivery."

The NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary, and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources. We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security, all delivered under world-leading environmental, safety, and labor standards. The NMA has a membership of more than 280 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers.

The NMA and our members support regulations that both foster environmental protection and promote responsible development. Our members operate under a comprehensive framework of federal and state laws, regulations, and policies that govern nearly every inch of a mine site. Our members regularly obtain Clean Water Act (CWA) section 404 dredge and fill permits from the U.S. Army Corps of Engineers (Corps) and CWA section 402 National Pollutant Discharge Elimination System (NPDES) permits from the U.S. Environmental Protection Agency (EPA) and state permitting authorities. We therefore have a significant interest in the Committee's work to identify challenges and opportunities in the CWA permitting process.

Mining companies rely on fair, consistent, and predictable permitting processes to support our national priorities and remain competitive in the global economy. But for too long, regulatory uncertainty in the permitting process has delayed projects, chilled investment in U.S. mining operations, and inhibited the ability to mine the raw materials on which our nation's energy, infrastructure, manufacturing, and mining supply chains depend. The U.S. already has one of the longest mine permitting processes in the world. A recent report by S&P Global found that it takes an average of 29 years to bring a mine online in the U.S.—longer than any other country except Zambia, which takes 34 years.[1] These delays have real world consequences. Unexpected delays alone can reduce a typical mining project's value by more than one-third, and the higher costs and increased risk that can arise from a prolonged permitting process can cut the expected value of a mine in half before production even begins.[2] Permitting uncertainty can also cause project proponents and investors alike to look outside the U.S. when determining where to invest and develop projects. This puts our nation's supply chain independence at risk and creates a dangerous situation where we become increasingly import-dependent on necessary materials from adversarial countries.[3]

For our members, CWA permitting is often a significant hurdle to executing critical projects efficiently and effectively. The NMA appreciates the Committee's work on addressing CWA permitting challenges and strongly supported key provisions of

[1] S&P Global, Mine Development Times: The U.S. in Perspective (June 2024), *available at* https://cdn.ihsmarkit.com/www/pdf/0724/SPGlobal__NMA__DevelopmentTimesUSinPerspective__June__2024.pdf.

[2] SNL Metals & Mining, "Permitting, Economic Value, and Mining in the United States," at 9 (June 15, 2015), *available at* https://nma.org/wp-content/uploads/2016/09/SNL__Permitting__Delay__Report-Online.pdf (last visited Feb. 11, 2025).

[3] SNL Metals & Mining, "Permitting, Economic Value, and Mining in the United States," at 9 (June 15, 2015), *available at* https://nma.org/wp-content/uploads/2016/09/SNL__Permitting__Delay__Report-Online.pdf (last visited Feb. 11, 2025).

the 118th Congress' H.R. 7023, Creating Confidence in Clean Water Permitting Act.[4] [5] Specifically, we supported Sections 2, 5, and 6. Those provisions would promote transparency in EPA's water quality criteria development process; provide regulatory certainty in shoring up the existing CWA section 402(k) permit shield provision; and clarify timing of the CWA section 404(c) veto process to support fairness and predictability.

In addition to these provisions in H.R. 7023, the NMA also encourages the Committee to explore statutory revisions to the CWA Section 401 state certification process to clarify the factors states and authorized Tribes can consider in their review; support the reauthorization of the Corps' current suite of Nationwide Permits; promote flexibility in the compensatory mitigation process; and find ways to help states and the federal government work together to support the CWA's cooperative federalism framework.

The NMA stands ready to assist the Committee on identifying opportunities to improve the CWA permitting process to support domestic mining. We look forward to working with your teams on next steps.

Sincerely,

RICH NOLAN,
President and Chief Executive Officer, National Mining Association.

Letter of February 20, 2025, from T. Lane Wilson, Sr. Vice President and General Counsel, The Williams Companies, Inc., to Hon. Mike Collins, Chairman, and Hon. Frederica S. Wilson, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Mike Collins

FEBRUARY 20, 2025.

The Honorable MIKE COLLINS,
Chairman,
Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, United States House of Representatives, 2251 Rayburn House Office Building, Washington, DC 20515.

The Honorable FREDERICA S, WILSON,
Ranking Member,
Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, United States House of Representatives, 2251 Rayburn House Office Building, Washington, DC 20515.

DEAR CHAIRMAN COLLINS AND RANKING MEMBER WILSON:

Thank you for holding this important Hearing in the U.S. House of Representatives Committee on Transportation & Infrastructure Subcommittee on Water Resources and Environment about the need for commonsense Clean Water Act (CWA) permitting reforms.

Williams is a trusted energy industry leader committed to safely, reliably, and responsibly meeting growing energy demand. We use our 33,000-mile pipeline infrastructure to serve 12 key supply areas and handle about one-third of the nation's natural gas. We operate Transco, the country's largest interstate natural gas network, with more than 40 percent more volume than the next largest natural gas pipeline.

PIPELINES ARE ESSENTIAL, PIPELINES POWER AMERICA

Pipelines are the safest, cleanest, and most cost-efficient means of transporting energy. The U.S. Department of Transportation recognizes that pipelines are essential infrastructure capable of moving greater volumes of energy resources than any other mode of transportation.

Oil and natural gas account for 74 percent of our nation's energy mix—nearly all of that product is transported via pipeline.[i]

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[4] National Mining Association, "Transportation and Infrastructure Clean Water Act Letter of Support," (January 2024), *available at* https://nma.org/wp-content/uploads/2025/02/TI-CWA-Letter-of-Support-1-30-23-Final.pdf

[5] Waters Advocacy Coalition, "'Waters of the United States' Implementation," (March 2024), *available at* https://nma.org/wp-content/uploads/2024/06/FINAL-WAC-Letter-on-WOTUS-Implementation-Questions.docx

[i] https://www.eia.gov/energyexplained/us-energy-facts/

Regions of the country where pipelines are more abundant see lower energy costs, and it is no coincidence that regions with higher energy costs are known for overly aggressive permitting regimes or abuses of the permitting process to block or cancel interstate natural gas pipeline projects.

During peak demand, New England experiences extremely high price spikes compared to other areas of the country. For example, gas prices have spiked numerous times during winter months in New England (as high as $75 per MMBtu) in the past decade, while prices have remained moderate and more stable in Southwest Pennsylvania (consistently under $5 per MMBtu), where abundant supplies have adequate pipeline outlets to serve peak demand.

Growth in U.S. natural gas is driven by LNG exports, data center growth, electrification, and a general increase in energy consumption. Lower-48 gas demand growth driven by LNG exports is expected to more than double by 2030, with an additional 13.2 Bcf/d of growth expected from 2024–2030.[ii]

Electricity demand is also experiencing 10 times faster growth per year this decade than what was seen in previous decades, driven by the energy needs of artificial intelligence and the emergence of new, large-load data centers. U.S. data center power demand is expected to more than double from about 22 GW in 2023 to 45 GW in 2030 per S&P base case, requiring as much as 4 Bcf/d of incremental gas demand. It is notable, however, that this new technology's demand needs could be underestimated. If combined-cycle gas-fired generation provided 100 percent of the electricity for the range of forecasts already presented, it could translate into incremental U.S. demand for power as high as 12 Bcf/day.

This growing demand cannot be met by intermittent resources such as wind and solar. In fact, excluding this forecasted growth, to replace the energy supplied by natural gas to New York's homes and businesses in February 2023 alone, New York would need 285 times more utility scale solar installations than the state had in 2022 and enough solar panels to cover 549,000 football fields. And it would require $1 trillion in solar construction costs.[iii]

Additionally, Americans cannot rely on intermittent wind and solar to meet demand during peak hours or extended weather events. The U.S. saw record high power demand in 2023, averaging 35.2 Bcf/d (2.1 Bcf/d higher than in 2022), even as wind and solar grew. And peak day demand for natural gas hit a record high of 54.8 Bcf/d in August of 2024, highlighting the continued need for reliable natural gas to meet peak day needs and back up intermittent resources.

Peak day gas demand for power generation is expected to increase across all major Independent System Operators (ISO), due to the growth in electrification, artificial intelligence (AI), and data center growth.

America Needs More Pipelines to Meet Growing Demands and Ensure National Security

Data centers driving advancements in artificial intelligence will be built overseas if we do not build the critical energy infrastructure required to support their operations here. The U.S. has the abundant energy resources to meet this need, but a byzantine permitting system coupled with fervent opposition to human advancement from activist groups makes building infrastructure unnecessarily challenging. To ensure America's long-term competitiveness, Congress must prioritize permitting reform.

Demand for natural gas has increased 43 percent since 2013, while the capacity of infrastructure to support the demand has only grown 25 percent. Without action, the gap between demand and physical infrastructure will grow as AI tools become more critical to the U.S. in a competitive world marketplace. This gap will continue to impact reliability and affordability and harm American consumers.

It generally takes our industry about nine months to build a large natural gas pipeline safely and in a way that has little environmental footprint, but it can take years to get a project approved by government agencies. America's permitting system is labyrinthian by any reasonable measure, requiring projects to receive duplicative approvals from dozens of federal and state agencies.

Beyond the permitting process, there are also significant litigation risks from groups weaponizing regulatory loopholes and misusing environmental statutes to

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[ii] Source: Wood Mackenzie North America Gas, Investment Horizon Outlook, November 2024.

[iii] Williams' analysis utilizing data from S&P Global Platts, US Energy Information Administration, Environmental Protection Agency and National Renewable Energy Laboratory. To replace the natural gas Btus that NY state's residential/commercial customers used on 02/3/2023, it would take 285x more utility scale solar installations than the state had in 2022.

delay and cancel projects. Virtually every pipeline project encounters these costly and time-consuming delays. It has become a feature of the system.

There are three key steps to streamlining the regulatory process that Congress can take to help ensure that we have the infrastructure needed to meet growing energy demands:

1. *Policymakers need to empower the Federal Energy Regulatory Commission (FERC)*. Currently, a single activist state can block a proposed interstate natural gas project, regardless of the benefits it would bring, through an abuse of the Clean Water Act's section 401 review process. FERC already considers water quality issues as a part of its National Environmental Policy Act (NEPA) analysis, so bringing the section 401 review process under FERC would create efficiencies and prevent any one state from obstructing interstate commerce.
2. *Congress needs to reform judicial review, providing for the courts to fairly review the actions and decisions of govemment agencies*, such as the Bureau of Land Management (BLM), the Environmental Protection Agency (EPA), and FERC, to cut back on lawfare that leaves good projects languishing for months, if not years. The best way to accomplish this reform is to alter the evidentiary standard to provide greater durability for federal authorizations and principled guard rails to ensure challenges of the authorization are based on evidence, not harmless gaps in the administrative process. A challenge should only be successful if its proponent is able to present evidence that establishes clearly and convincingly that a permit authorization was improper. Otherwise, the authorization should stand.
3. *Lastly, but equally as important, is fixing the remedy allowed under the NEPA*, the procedural statute that is wrongly being used to delay, deny, and cancel energy infrastructure. NEPA litigation should be limited to the purpose of the statute—to inform the public, Defects in a NEPA analysis should only result in further disclosures, not in unduly delaying or cancelling a project.

These reforms would allow interstate natural gas pipelines, as well as other energy infrastructure, to be built to meet demand. We must come together to ensure the Clean Water Act, NEPA, and judicial review of agency decisions are working for the American people—not preventing progress and competitiveness in the name of politics.

WEAPONIZATION OF CLEAN WATER ACT SECTION 401

Section 401 of the Clean Water Act applies to all energy and infrastructure projects that require a federal permit and which may cause a discharge to a water of the United States. Pursuant to section 401, states and tribes are required to either certify that a project is protective of water quality or waive the certification requirement. Section 401 allows state and tribal participation in federal permitting procedures that may otherwise exclude or preempt such input. The certification process must be completed before a federal permit may be issued.

Each year, thousands of federal permit applications are submitted for projects that will require section 401 certifications, including traditional energy projects and new critical infrastructure that will drive the deployment of lower carbon emission energy sources. For example, an energy infrastructure project that impacts a federal wetland or water requires authorization from the Army Corps of Engineers under CWA section 404 or the Rivers and Harbors Act section 9 or 10. Annually, the Army Corps issues nearly 3,500 individual permits and authorizes more than 50,000 projects under general permits. Every single Army Corps individual permit, and many general permits, require a section 401 certification. Army Corps-permitted projects include large wind and solar generation, new transmission lines to bring remote renewable generation to load centers, and critical minerals exploration and mining that is essential to support the burgeoning battery storage and electric vehicle economies.

Additionally, the Federal Energy Regulatory Commission issues 44 federal licenses, and EPA issues 125 federal discharge permits annually. Most, if not all, of these permits also require a section 401 certification.

Ambiguous language in the statute, along with a lack of federal oversight, has led to confusion over the scope, timing, and procedures that are applicable to section 401 certifications. These circumstances have also led some states to interpret the section 401 authority very broadly and to delay certification decisions for years or even decades. While most states focus their section 401 review on potential water quality impacts, as the Clean Water Act requires, some states have used the section 401 program to veto projects that do not align with, for example, state energy policy. Similarly, while most states act on a certification request within the statutory one-

year period, some states have adopted practices, like withdraw-and-resubmit procedures, and denials without prejudice, that result in a years-long or decades-long certification process. These ambiguities create opportunities for bad faith project delay and veto of interstate projects.

As The Wall Street Journal reported, "pipeline projects have been blocked that would deliver gas from prolific shale-gas fields in Pennsylvania, Ohio, and West Virginia." Williams has some specific examples of how CWA section 401 has been weaponized against pipeline projects.

CONSTITUTION AND NESE PIPELINE DELAYS RESULTED IN HIGHER COSTS, LOST ECONOMIC OUTPUT IN THE NORTHEAST

The Cuomo administration's denial of the water quality permits needed for the Constitution pipeline project blocked jobs, decreased tax revenue, and increased emissions in economically challenged areas. In addition, this denial has placed the region's grid reliability at risk.

The $683 million Constitution project was to bring natural gas from the Marcellus Shale in Susquehanna County, Pennsylvania, to Schoharie County, New York, where it would have connected to two existing interstate natural gas pipelines (Iroquois Gas Transmission and Tennessee Gas Pipeline) that directly serve New York and New England. The U.S. Chamber of Commerce found that the delay of the Constitution Pipeline had resulted in $3.9 billion in loss economic output and over 23,000 job-years of work for the region.

Water quality permits are to be granted or denied within one year, but the Constitution Pipeline endured New York's repeated delays of its Clean Water Act Section 401 certificate application based on meritless claims related to the "completeness of the application." These delays were compounded by New York's efforts to restart the one-year shot clock every time a new submission was made.

Specifically, in 2014, New York requested that Constitution rescind, update, and resubmit its application. In 2015, the New York State Department of Environmental Conservation (NYDEC) requested the company do so again. In 2016, two years after its initial receipt, New York denied the application claiming it lacked "sufficient information to enable the Department to determine if the Application demonstrates compliance" with New York water quality standards. In the wake of Hoopa Valley and associated precedents around Millennium Pipeline, on August 28, 2019 the Federal Energy Regulatory Commission (FERC) confirmed that New York had waived its CWA section 401 authorities through its dilatory requests for more information. Unfortunately, eight years of arbitrary regulatory and litigation delays, along with changing market conditions, prompted the project sponsors to pull the plug on the project on February 21, 2020.

Northeast Supply Enhancement (NESE), another project killed by New York based on meritless water quality grounds, serves as another example. New York first denied NESE's water quality permit on May 15, 2019, and then did so again on May 16, 2020, after a resubmittal. New Jersey followed suit. Though the Cuomo Administration previously expressed concerns over climate impacts, Governor Andrew Cuomo sent a letter to National Grid saying that it should pursue more emissions-intensive and less safe means of delivering natural gas like trucks, barges, and ships, rather than pipelines. Despite his administration blocking a pipeline meant to expand service to New York customers and reduce reliance on higher emitting energy sources, he demanded that National Grid find alternatives or lose its franchise in the New York City metropolitan area. Without pipelines, New York state and local officials need to "grapple with the potential need for new trucked gas supplies and associated infrastructure, as well as the risk for supply disruptions and moratoriums in coming years."—Politico, 2020xiii

Without changes to section 401 that provide greater clarity and regulatory certainty, the literally thousands of energy infrastructure projects subject to section 401 each year could also be subject to the weaponization of section 401.

CONCLUSION: CONGRESS CAN PROVIDE MUCH-NEEDED CERTAINTY FOR PERMITTING PROJECTS

Congress can instill certainty and spur increased investment of capital in American energy infrastructure, unleashing a renaissance in American manufacturing and an advancement of national security, all with American energy resources.

Pipelines power America, and our country and its citizens have received the benefits of this large-scale infrastructure for years. We should not take this historical benefit for granted and let competing countries rapidly build out their own infrastructure, while our permitting system continues to stifle ours. The timing is perfect for meaningful permitting reform that includes pipelines.

Real permitting reform will put the U.S. on a path to meet the ever-growing need for energy and a path to achieve human flourishing. The changes will cost taxpayers nothing while paying a world of dividends.

Sincerely,

T. LANE WILSON,
Sr. Vice President and General Counsel, The Williams Companies, Inc.

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