THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation

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September 9, 2024

The Honorable Sam Graves
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
1135 Longworth House Office Building
Washington, DC 20515

The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
2163 Rayburn House Office Building
Washington, DC 20515

The Honorable David Rouzer
Chairman
Subcommittee on Water Resources and Environment
U.S. House of Representatives
2333 Rayburn House Office Building
Washington, DC 20515

The Honorable Grace Napolitano
Ranking Member
Subcommittee on Water Resources and Environment
U.S. House of Representatives
1610 Longworth House Office Building
Washington, DC 20515

Dear Chairman Graves, Chairman Rouzer, Ranking Member Larsen, and Ranking Member Napolitano:

Thank you for the invitation to provide testimony on the implementation of the Clean Water Act, specifically the scope of statute as defined by the term "Waters of the United States" (WOTUS), following the United States Supreme Court decision in *Sackett*.

This topic is important to the State of Alaska. We have roughly 900,000 miles of navigable rivers and streams; 22,000 square miles of lakes; 27,000 miles of coastline; and, at about 130 million acres, more wetlands than every other state in the union combined. And all of that is before considering glaciers and groundwater. Anyone looking to build a home, a road, or a mine in the state will likely impact a water of some sort.

Alaska's Department of Environmental Conservation (DEC) regulates pollution across media – from soil contamination to air emissions to water discharges. Under the federal Clean Water Act, DEC implements the Section 402 discharge permitting program, evaluates Section 404 dredge and fill permits for Section 401 certification, and assesses water quality throughout the state to ensure water bodies that fail to meet state water quality standards have plans developed to address that impairment.

Importantly, DEC also possesses broad authority under state statute to establish and protect water purity standards. Anyone looking to discharge wastewater in the state of Alaska needs authorization from DEC – regardless of whether the discharge goes to a traditional navigable water body, a tributary, an adjacent wetland, an isolated surface water, or groundwater. In fact, in all 50 states, state agencies work diligently to do their part to protect waters in their jurisdictions. Many of these states, Alaska among them, generally apply the same water quality standards to all waters within their boundaries regardless of whether they are under federal jurisdiction.

Thus, a reduced scope of federal authority does not necessarily mean activity will be free of regulatory oversight. State policymakers can make judgment calls about what level of protection is appropriate for their residents. And states are often better situated to make those judgment calls. State officials have more complete visibility on circumstances for residents, are more accessible, and may have more nuanced appreciation for unique ecosystem issues and concerns.

To illustrate, many factors make Alaska's circumstances unique compared to other states and regions of the country. There's the sheer geographic size and volume of water bodies and wetlands. And, as a younger state, Alaska remains largely undeveloped in terms of infrastructure and resource extraction. Our state is also in the enviable position of having had landscape level planning to establish state and federal conservation units that will remain undeveloped even as other resource rich areas – often on federal, State, or Alaska Native Corporation owned lands – could progress to production. In this context, Alaskan lawmakers and elected officials might make different judgment calls than the federal government or more industrialized and developed states.

But federal agencies are reluctant to trust states; instead, they continue to grope for complete authority over all waters. Nationally, more than a year after *Sackett* was decided and the agencies published a revised rule, EPA and the Corps have still failed to address the "indistinguishable" concept and the vagueness concerns articulated by the Supreme Court. Rather than developing a standard that can be understood and implemented by the regulated community and state partners, the agencies appear intent on leveraging uncertainty and the risk of civil and criminal liability to effectively maintain sweeping authority in their own hands.

As long as major elements of the Supreme Court guidance go unaddressed, conflict and pendulum swings in implementation will likely continue. Without stability, states will struggle to appropriately adjust existing programs. Nor will states have the time to seek additional authorities from their legislatures. And the public we serve will continue either going through unnecessary and expensive permitting exercises, getting approvals from the incorrect authority, or, as the Court feared, choosing to forego productive activities on their land.

Federal policymakers must remember that states exist. We're here, and we're ready to do our jobs to protect state waters. Moreover, working with states to achieve a stable regulatory framework would best serve the field of water quality regulation.

Sincerely,

Emma Pokon
Commissioner