

**Testimony of Andrea J. Travnicek, Ph.D, Director, North Dakota Department of Water Resources**

**Submitted to the  
United States House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Water Resources and Environment**

**Hearing on “The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion”**

**May 16, 2023**

Chairman Rouzer, Ranking Member Napolitano, and members of the Subcommittee, thank you for the invitation to testify today on the impact of the Clean Water Act on infrastructure project completion. My name is Andrea Travnicek and I am the Director of the North Dakota Department of Water Resources. The Department is charged with managing use of the state’s waters.

In managing North Dakota’s waters, the Department works closely with other state agencies. We understand North Dakota’s unique hydrological landscape. North Dakota has over one million wetlands, covering approximately six percent of the entire state. Many of these wetlands are in North Dakota’s prairie pothole region and may be isolated and temporary. North Dakota diligently protects these wetlands and all its waters, both surface and subsurface, while at the same time encouraging appropriate economic development for beneficial use by agriculture, oil and gas, and other industries. We take these management responsibilities very seriously, and strongly believe that North Dakota’s waters are better protected and more effectively managed by North Dakota agencies than by federal agencies headquartered in Washington, D.C.

Over the past decade, North Dakota has vigorously resisted federal intrusion into the management of its state waters, including the EPA’s and Corps latest rule defining “Waters of the United States”

– or WOTUS – for purposes of the Clean Water Act. Currently, North Dakota and 23 other states are challenging the rule in a lawsuit brought in North Dakota Federal District Court. Recognizing the rule’s harmful impacts, Judge Hovland issued a preliminary injunction order that prohibits application of the rule in the plaintiff states. As a result, the pre-2015 regulatory regime remains in place in North Dakota.

If the new WOTUS rule went into effect in North Dakota, the Department would be directly impacted because it manages numerous large water infrastructure projects and assists with flood control and water supply projects throughout the state. With these projects, the Department is often in the position of applying for dredge and fill permits from the Corps under Section 404 of the Clean Water Act. Under the rule, the Department would be forced to undertake an expensive jurisdictional analysis for these projects to determine if they impact WOTUS under the expanded definition and are thus subject to Section 404 permitting requirements.

For example, the Northwest Area Water Supply, or NAWS, which is owned by the State of North Dakota, intends to bring water to 81,000 North Dakota citizens in the north central prairie pothole region of our state with a greatly improved water supply – both in terms of quality and quantity. Many cities and rural areas in the NAWS project area have domestic water supplies that do not meet minimum drinking water standards. The benefits of NAWS include not only a clean and abundant supply of water for the residents of North Dakota, but more opportunities for potential industries and a stronger economy. To date, federal, state, and local partners have already invested over \$350 million into NAWS project works, with an additional \$85 million in future investments

planned. The risk of NAWIS infrastructure being potentially adversely impacted by this rule is unthinkable, and could have tremendous human health and economic impacts in our state.

Intrusive federal regulation may have unintended consequences that are harmful to the environment. The new WOTUS rule would also result in additional costly evaluations to determine Section 404 permitting requirements for underground pipelines being built in the state. Pipelines may need to be rerouted with excessive reengineering costs, permitting delays, or perhaps canceled altogether. This could impact pipelines needed to transport natural gas to reduce flaring and meet the state's target of reaching 98-100% gas capture and 0% routine flaring by 2030. To meet this target of eliminating flaring, the gas gathering and processing industry needs to construct thousands of miles of natural gas pipelines per year for the next ten to fifteen years. The rule would also impact the ability to construct the thousands of miles of pipelines needed to transport carbon dioxide to meet national carbon capture and storage goals.

Even without the new rule, Section 404 permitting requirements cause harmful delays that lead to costs increases, especially in North Dakota's prairie pothole region where it is often subjective as to whether WOTUS will be impacted. Section 404 permitting delays are especially harmful in North Dakota, due to our short construction season. A loss of one construction season carries through the entire infrastructure program resulting in cumulative increased trucking and the associated environmental impacts to air quality.

In addition to rescinding the new WOTUS rule, one solution to ease overly stringent federal permitting requirements would be to adopt state specific regional conditions for the Corps' Nationwide Permit 12, which applies to oil and gas pipelines, and Nationwide Permit 58, which applies to any linear utility line. State regional conditions should be adopted into these Nationwide Permits to address federal and state environmental concerns as we proposed to the Corps as recently as October 2020. Another area for improvement would be to have more consistent application of Section 404 permitting requirements by Corps staff and to address staffing issues at the agency that exacerbate permitting delays.

North Dakota has a significant interest both in the proper management and protection of its state waters and in improving its infrastructure to support public health, safety, and the economy. We appreciate the partnership of the federal agencies in achieving these goals, but our federal partners must respect states' rights. EPA and the Corps should work with states to reduce uncertainties and inconsistencies in Section 404 permitting and other Clean Water Act programs to improve the ability of states to timely complete important infrastructure projects.