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**Hearing on EPA Actions Under the Climate Action Plan and Waters of the U.S.**

**Committee on Small Business  
U.S. House of Representatives  
July 30, 2014**

Chairman Graves, Ranking Member Velázquez, members of the committee: thank you for the opportunity to testify today on EPA's actions under the President's Climate Action Plan, and on EPA and the U.S. Army Corps of Engineers' recently proposed rule which would clarify the jurisdictional scope of the Clean Water Act (CWA), simplifying and improving the process for determining waters that are, and are not, covered by the Act.

EPA Actions Under the President's Climate Action Plan

Climate change is one of the greatest challenges of our time. It already threatens human health and welfare and economic well-being, and if left unchecked, it will have devastating impacts on the United States and the planet.

The science is clear. The risks are clear. And the high costs of climate inaction are clear. We must act. That's why President Obama laid out a Climate Action Plan in June 2013 in which he directed EPA and other federal agencies to take meaningful steps to mitigate the current and future damage caused by carbon dioxide emissions and to prepare for the anticipated climate changes that have already been set in motion. The Plan has three key pillars: cutting carbon pollution in America; preparing the country for the impacts of climate change; and leading international efforts to combat global climate change.<sup>1</sup>

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<sup>1</sup> More information on the Climate Action Plan at: <http://www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf>. While EPA is involved in many of the Plan's efforts, including those addressing emissions of methane, hydrofluorocarbons (HFCs), and other short-lived climate pollutants, this testimony will focus on the efforts to reduce carbon pollution from new and existing power plants.

EPA plays a critical role in implementing the Plan's first pillar, cutting carbon pollution. Over the past four years, EPA has begun to address this task under the Clean Air Act. Our first steps addressed motor vehicles and, working with the National Highway Traffic Safety Administration, resulted in greenhouse gas and fuel economy standards for Model Year 2012 to 2025 light-duty vehicles, and standards for model year 2014 through 2018 heavy duty trucks and buses.

Building on this success, the President asked EPA to work with states, utilities and other key stakeholders to develop plans to reduce carbon pollution from future and existing power plants.

Power plants are the largest source of carbon dioxide emissions in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions. While the United States has limits in place for the level of arsenic, mercury, sulfur dioxide, nitrogen oxides, and particle pollution that power plants can emit, there are currently no national limits on carbon pollution levels.

In September 2013, the EPA announced its proposed standards for new natural gas-fired turbines and new coal-fired units. The standards reflect the demonstrated performance of efficient, lower carbon technologies that are currently being used today. They set the stage for continued public and private investment in technologies like efficient natural gas and carbon capture and storage. The proposal was published in the Federal Register on January 8, 2014, and the formal public comment period closed on May 9, 2014. We have received more than two million comments on this proposal and will carefully consider them as we develop a final rule.

On June 2, 2014, EPA issued its proposed Clean Power Plan for existing plants. The plan is built on advice and information from states, cities, businesses, utilities, and thousands of people about the actions they are already taking to reduce carbon dioxide emissions. It aims to cut energy waste and leverage cleaner energy sources by doing two things: First, it uses a national framework to set achievable state-specific goals to cut carbon pollution per megawatt hour of electricity generated. And second, it empowers the states to chart their own, customized path to meet their goals.

The EPA's stakeholder outreach and public engagement in preparation for this rulemaking was unprecedented. Starting last summer, we held eleven public listening sessions around the country. We participated in hundreds of meetings with a broad range of stakeholders, including small entity interests such as municipal and rural electric cooperatives, across the country, and talked with every state.

Now, the second phase of our public engagement has begun. We've already had dozens of calls and meetings with states and other stakeholders. The more formal public process – both a public comment period that runs through October 16, 2014, and public hearings this week in Atlanta, Denver, Pittsburgh, and Washington, DC – will provide further opportunity for stakeholders and the general public to provide input.

There has been tremendous public interest in the proposal: already, we have received nearly 300,000 written comments on the proposal. At the public hearings this week, we anticipate hearing oral comments from about 1,600 people, many of whom represent small businesses.

In drafting the power plant proposals, we have been mindful of its effects on small businesses and careful to ensure we are complying with SBREFA and all applicable requirements. Outreach and public comment are an important component of our rulemaking process, and we have often designed our rules to ensure that they do not impose an undue burden on small entities.

### Waters of the U.S. Proposed Rule

The foundation of the agencies' rulemaking efforts to clarify protection under the CWA is the goal of providing clean and safe water to all Americans. Clean water is vital to every single American – from families who rely on affordable, safe, clean waters for their public drinking water supply, and on safe places to swim and healthy fish to eat, to farmers who need abundant and reliable sources of water to grow their crops, to hunters and anglers who depend on

healthy waters for recreation and their work, to businesses that need a steady supply of clean water to make their products. The range of local and large- scale businesses that we depend on—and who, in turn, depend on a reliable supply of clean water— include tourism, health care, farming, fishing, food and beverage production, manufacturing, transportation and energy generation. Approximately 117 million people – one in three Americans – get their drinking water from public systems that rely on seasonal, rain-dependent, and headwater streams – the very waters this rule would ensure are protected from pollution.<sup>2</sup>

In recent years, several Supreme Court decisions have raised complex questions regarding the geographic scope of the Act. For nearly a decade, members of Congress, state and local officials, industry, agriculture, environmental groups, and the public have asked our agencies for a rulemaking to provide clarity. This complexity has made enforcement of the law difficult in many cases, and has increased the amount of time it takes to make jurisdictional determinations under the CWA. In response to these implementation challenges and significant stakeholder requests for rulemaking, the agencies developed the proposed rule.

We believe the result of this rulemaking will be to improve the process for making jurisdictional determinations for the CWA by minimizing delays and costs and to improve predictability and consistency for landowners.

The agencies' proposed rule helps to protect the nation's waters, consistent with the law and currently available scientific and technical expertise. The rule provides continuity with the

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<sup>2</sup> A county-level map depicting the percent of the population receiving drinking water directly or indirectly from streams that are seasonal, rain-dependent or headwaters is available at <http://water.epa.gov/type/rsl/drinkingwatermap.cfm>.

existing regulations, where possible, which will reduce confusion and will reduce transaction costs for the regulated community and the agencies. Toward that same end, the agencies also proposed, where consistent with the law and their scientific and technical expertise, categories of waters that are and are not jurisdictional, as well as categories of waters and wetlands that require a case-specific evaluation to determine whether they are protected by the CWA.

The agencies' proposed rule continues to reflect the states' primary and exclusive authority over water allocation and water rights administration, as well as state and federal co-regulation of water quality. The agencies worked hard to ensure that the proposed rule reflects these fundamental CWA principles, which we share with our state partners.

For the past several years, the EPA and the Corps have listened to input from the agriculture community while developing the proposed rule. Using the input from those discussions, the EPA and the Corps then worked with the USDA to ensure that concerns raised by farmers and the agricultural industry were addressed in the proposed rule. The proposed rule does not change, in any way, existing CWA exemptions from permitting for discharges of dredged and/or fill material into waters of the U.S. associated with agriculture, ranching, and forestry activities.

I want to emphasize that farmers, ranchers, and foresters who are conducting these activities covered by the exemptions (activities such as plowing, tilling, planting, harvesting, building and maintaining roads, ponds and ditches, and many other activities in waters on their lands), can continue these practices after the new rule without the need for approval from the Federal government.

The scope of the term “waters of the U.S.” has generated substantial interest within the small business community. In light of this interest, the EPA determined to seek early and wide input from representatives of small entities while formulating a proposed definition of this term that reflects the intent of Congress consistent with the mandate of the Supreme Court’s decisions. This input was sought voluntarily, as it was certified in the preamble to the proposed rule that the proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA).<sup>3</sup>

The small entities outreach process has enabled the agencies to hear directly from small business representatives, at a very preliminary stage, about how this complex issue should be approached. EPA has also prepared a report summarizing the small entity outreach to date, the results of this outreach, and how these results have informed the development of this proposed rule.<sup>4</sup> Since publishing the proposed rule, the agencies have met many times with small businesses and other entities to hear their perspectives on the proposed rule and to identify potential opportunities for further clarifying CWA jurisdiction in a final rule. Most recently, the agencies participated in an SBA-sponsored roundtable on July 21<sup>st</sup>. We look forward to continuing these efforts both during the remainder of the public comment period and as we write a final rule.

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<sup>3</sup> Because fewer waters will be subject to the CWA under the proposed rule than are subject to regulation under the existing regulations, this action will not affect small entities to a greater degree than the existing regulations. As a consequence, this action if promulgated will not have a significant adverse economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required. Additional background regarding the agencies’ compliance with the RFA is available in the preamble to the proposed rule. See 79 FR 22220.

<sup>4</sup> This report is available in the docket for the proposed rule at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2011-0880-1927>.

The agencies published the proposed rule in the Federal Register on April 21, and the public comment period on the proposed rule will be open for 182 days, closing on October 20.

During this period, the agencies have launched a robust outreach effort, holding discussions around the country and gathering input from states, local governments, small businesses, and other stakeholders needed to shape a final rule. We welcome comments from all stakeholders on the agencies' proposed rule. At the conclusion of the rulemaking process, the agencies will review the entirety of the completed administrative record, including public comments and the EPA's final science synthesis report, as we work to develop a final rule.

Thank you again, and I will be happy to answer your questions.