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February 8, 2023

The Honorable Shelley Moore Capito
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Capito:

On behalf of NFIB, the nation's leading small business advocacy organization, I write in support of S.J.Res.7, the Congressional Review Act (CRA) resolution of disapproval for the Waters of the United States (WOTUS) final rule. The resolution would repeal the Environmental Protection Agency's (EPA) and the Department of the Army's final rule that expanded the federal government's regulatory authority over wetlands, farms, and private property.

By issuing this final rule, the Biden Administration ignored the calls of America's small farmers, ranchers, developers, contractors, and other small businesses to wait for the U.S. Supreme Court decision in the *Sackett v. EPA* case, which is anticipated in the coming months. The Supreme Court ruling could further alter federal authority under the *Clean Water Act*, creating additional uncertainty for small business owners.

According to NFIB's *Problems and Priorities* survey, "unreasonable and burdensome government regulation" is a significant problem facing small businesses.¹ In 2021, the Biden Administration finalized 283 regulations and imposed more than \$200 billion in regulatory costs, the largest total in the first year of a presidency.² In addition to these finalized regulatory costs, the Biden Administration has proposed an additional 311 rules that could add another \$191.2 billion in costs for regulated entities.³

Unfortunately, these cost estimates likely understate the regulatory burdens faced by small businesses. For example, when finalizing the WOTUS rule, the EPA and the Department of the Army certified the rule "will not have a significant economic impact on a substantial number of small businesses."⁴ However, America's small farmers, ranchers, developers, contractors, and other small businesses disagree. Small business owners believe the final rule will significantly increase their regulatory costs and uncertainty at a time when many face inflation, supply chain disruptions, and labor shortages.

NFIB supports the WOTUS resolution of disapproval and appreciates your leadership to reduce the regulatory burdens faced by small businesses.

¹ Holly Wade & Andrew Heritage, *Small Business Problems & Priorities*, NFIB Research Center, August 2020, <https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf>.

² Dan Bosch, 2022: *The Year in Regulation*, American Action Forum, January 2023, <https://www.americanactionforum.org/research/2022-the-year-in-regulation/>.

³ *Id.*

⁴ 88 *Fed. Reg.* 3139, col. 3. <https://www.epa.gov/system/files/documents/2023-01/Revised%20Definition%20of%20Waters%20of%20the%20United%20States%20FRN%20January%202023.pdf>.

Sincerely,

A handwritten signature in black ink that reads "Kevin Kuhlman". The signature is written in a cursive, slightly slanted style.

Kevin Kuhlman
Vice President, Federal Government Relations
NFIB