United States Senate

WASHINGTON, DC 20510

October 23, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

The Honorable John McHugh
Secretary
U.S. Army
101 Army Pentagon
Washington, D.C. 20310

The Honorable Thomas Vilsack
Secretary
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Secretary McHugh, Secretary Vilsack, and Administrator McCarthy,

In late spring, the Obama Administration published an agricultural Interpretive Rule ("Interpretive Rule") as a companion to its proposed regulation for defining Waters of the United States ("WOTUS"). We have heard from farmers, ranchers, and other rural constituents about the Interpretive Rule and are deeply concerned it has created great confusion about what agriculture activities are exempt from regulation under the Clean Water Act. Many of us expressed these concerns to Administrator McCarthy during a meeting this past summer, and today we are writing to request an update on the status of the rule and to ask for its immediate withdrawal.

Under current law, normal farming and ranching activities are exempt from permitting requirements. The Interpretive Rule has inserted substantial uncertainty into this process by outlining just 56 activities out of more than 160 conservation practices that previously qualified for the normal farming and ranching exemption under section 404 of the Clean Water Act. Further, it calls into question whether any other normal farming or ranching activity not conducted in accordance with a USDA technical standard can qualify for the exemption. By now requiring, for the first time, that a producer meet this higher standard, the Interpretive Rule has narrowed the normal farming exemption and created a threshold many producers will have difficulty meeting. The change also dramatically increases the risk of litigation as the standards will be impossible to consistently apply and enforce at the farm level.

Beyond adding confusion and uncertainty, the Interpretive Rule would fundamentally change the relationship between the Department of Agriculture and farm families. Over decades of farm policy, USDA has established an unprecedented relationship of trust with farmers, ranchers, and rural stakeholders. This unique relationship is built on voluntary conservation programs and a mutual commitment to protecting natural resources and keeping land in agriculture. Bringing USDA into the Clean Water Act permitting process would profoundly shift the nature of this successful approach by dismantling a longstanding partnership between the Federal government and agriculture community.

With these concerns, we write for an update on implementation of the Interpretive Rule, and ask for its immediate withdrawal. The Interpretive Rule became final on publication with little opportunity for farmers, ranchers, and other rural constituents who are directly impacted by this policy to engage in its development. As the Administration continues to extend the timeframe for finalization of the flawed WOTUS proposal, any further discussion of how agricultural activities may fit into this framework must allow for a transparent and public process in which the voice of American agriculture can be heard.

Respectfully,