



National Association of Conservation Districts

December 9, 2020

Mr. Patrice Simms
Team Lead, EPA Review Team
Biden-Harris Transition Team
1401 Constitution Ave NW
Washington, DC 20230

Dear Mr. Simms,

The National Association of Conservation Districts (NACD) represents America's nearly 3,000 conservation districts and the more than 17,000 men and women who serve on their governing boards. Conservation districts are local units of government established under state law to carry out natural resource management programs at the local level. Conservation districts work with millions of cooperating landowners and operators to help them manage and protect land and water resources on private and public lands in the United States.

For more than 75 years, conservation districts have been leaders in locally-led efforts to ensure a clean and sustainable water supply for the nation. By engaging private landowners, conservation districts provide proactive assistance in putting voluntary conservation practices on the ground. These practices have far-reaching benefits, including improved water quality and resiliency. Conservation practices can minimize the impacts of major weather events like drought, as soil health practices increase infiltration and improve nutrient uptake and can reduce runoff and protect water quality, mitigating flooding risks. With earned trust and a proven ability to form partnerships at the local level, conservation districts are well positioned to play a key role in addressing water quality challenges in local communities. NACD acknowledges the successes of the Clean Water Act (CWA) over its 40-year existence. Clean water is critical for the health and viability of the urban and rural landscapes conservation districts serve.

Section 319 of the Clean Water Act

The EPA's Section 319 program specifically focuses on nonpoint sources of water pollution, such as agricultural runoff, abandoned mine drainage and stormwater. Unlike point sources that originate from a fixed point – such as a pipe, water treatment facility or industrial plant – nonpoint sources are much more diffuse, and as a result, more difficult to address.

The Clean Water Act (CWA) of 1972 gave the EPA authority to regulate point source pollution but not nonpoint source pollution. It wasn't until 1987, when Congress amended CWA to include Section 319, that a grant program was established to help states, territories and tribes curb nonpoint pollution through voluntary incentives.

Conservation districts are vital partners who implement a large share of the program at the local level and have had great success leveraging these grants to address water quality in their communities. Annual appropriations funding for this program had been as high as \$238 million in 2003 but has fluctuated between \$150 and \$175 million for the past 10 years. NACD encourages the incoming Biden Administration to request Congress provide robust funding for this program, which features the best of federal, state and local collaboration to help improve nonpoint sources of water pollution. Regional EPA programs like the Great Lakes Regional



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Program Office and the Chesapeake Bay Program Office are also crucial to supporting locally-led efforts to improve water quality in these waterbodies.

Clean Water Act Implementation

For the last several years, landowners have struggled to comply with continually changing regulations and a patchwork of court rulings on what water bodies are jurisdictional for the purposes of the Clean Water Act. NACD was supportive of the September 2019 decision by the EPA to fully repeal the 2015 “Waters of the United States” (WOTUS) rule, which expanded the jurisdiction of the CWA unlawfully and unnecessarily and was pleased to see the new Navigable Waters Protection rule finalized in April of 2020. Since the Supreme Court decisions of SWANCC and Rapanos of the early 2000s, interpretation of Clean Water Act jurisdiction has changed with each new presidential administration. We would encourage the incoming Biden Administration to take a longer view of CWA jurisdiction and avoid simply repealing and replacing the current rule which will lead to further confusion among landowners.

Any agency action should be conducted in a way that respects local and state water rights, does not expand the federal jurisdiction over water resources, and acknowledges historical congressional intent and Supreme Court actions. Specifically, we would request the agency to not limit Section 404 agricultural practice exemptions by publishing a list of exempted practices as was done in 2014. While we appreciate that this list was done to provide clarity, the list was not exhaustive and ultimately created more ambiguity. NACD supports maintaining all the existing agricultural exemptions in the CWA and those exemptions associated with existing regulation.

The 2015 Clean Water Rule’s terms and definitions also did not appropriately reflect the diversity of natural resources and landowners across the country and inadvertently decreased conservation districts’ ability to help landowners implement voluntary conservation on the ground. Leveraging local governmental guidance and efforts through voluntary conservation has provided an increasingly effective model for protecting our nation’s water resources. Additionally, the incoming Biden Administration must not expand the jurisdiction of the Clean Water Act to water quantity or groundwater concerns. Any attempt to regulate water quantity or groundwater within the Clean Water Act would be an expansion of law beyond Congress’s original intent.

EPA Farm, Ranch and Rural Communities Advisory Committee (FRRCC)

Established in 2008, the FRRCC provides independent policy advice, information and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities. Many EPA rules and regulations can have an outsized effect on agricultural producers, and it is vitally important that the incoming Biden Administration continues to receive this Committee’s input. NACD’s President-elect Michael Crowder, who currently manages farming and ranching operations in Washington state and Illinois and is a partner of his family’s third-generation farm in Indiana, was appointed to FRRCC in June of 2019 to bring the local conservation mindset to EPA decisions. NACD encourages the Biden Administration to continue holding meetings of this important Committee and heeding their advice and recommendations.



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NACD encourages the incoming Biden Administration's EPA to recognize conservation districts as local partners in our nation's efforts to protect water quality. Our country's almost 3,000 conservation districts, and their respective state and territory associations, look forward to working with the incoming Administration in the coming years to prioritize locally-led conservation.

Sincerely,

A handwritten signature in black ink that reads "Tim Palmer".

Tim Palmer
NACD President

A handwritten signature in black ink that reads "Michael Crowder".

Michael Crowder
NACD President-Elect