



Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington DC 20515

Peter A. DeFazio  
Chairman

Katherine W. Dedrick  
Staff Director

Sam Graves  
Ranking Member

Paul J. Sass  
Republican Staff Director

August 25, 2021

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20460

Mr. Jaime Pinkham  
Acting Assistant Secretary of the  
Army for Civil Works  
108 Army Pentagon, Room 3E446  
Washington, D.C. 20310-0108

**RE: Request for Extension of Public Comment Period and Meetings dates to provide feedback on the Definition of “Waters of the United States” 86 Fed. Reg. 41911 (Aug. 4, 2021)**

Dear Administrator Regan and Acting Assistant Secretary Pinkham:

We write to you in response to the Federal Register Notice published on August 4, 2021, announcing plans for the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (collectively, the “Agencies”) to host public meetings regarding revising the definition of “waters of the United States” (WOTUS) under the *Clean Water Act*.<sup>1</sup>

The Agencies’ decision to revise the definition of WOTUS (the “Notice”), and consequently to forgo the long-awaited clarity provided by the Navigable Waters Protection Rule, will have broad implications for farmers, homeowners, private property owners, manufacturers, small businesses, water districts, and local governments.<sup>2</sup> Given the adverse impacts previously seen with overly broad interpretations, such as the flawed Obama Administration WOTUS rule, it is essential the Agencies administer a comprehensive process to solicit public feedback on the scope of the *Clean Water Act* jurisdiction when initiating a new rulemaking process.

---

<sup>1</sup> Notice of Public Meetings Regarding “Waters of the United States,” Establishment of a Public Docket; Request for Recommendations, 86 Fed. Reg. 41911 (August 4, 2021); 33 CFR § 328.3; 33 U.S.C. §1251 et seq [hereinafter Notice].

<sup>2</sup> The Navigable Waters Protection Rule: Definition of “Waters of the United States, Final Rule, 85 Fed. Reg. 22250 (Apr. 21, 2020).

The Notice announced dates and times to hold four public meetings, with the potential to “reserve a time for an additional meeting that will be added in case all speaking slots are filled in earlier meetings.”<sup>3</sup> All four meetings are scheduled to take place during the month of August.<sup>4</sup> In the Notice, the Agencies request stakeholder feedback on a broad array of topics, ranging from the implementation of a future regulation to environmental justice interests.<sup>5</sup>

The decision to host meetings within such a short timeframe on a wide range of topics is indicative of a rushed, insincere notice-and-comment process by this Administration. A mere single month of public meetings is a woefully insufficient amount of time to collect meaningful input on a regulation that will have a profound, long-term impact on the everyday lives of American farmers, businesses, families, and our environment.

We urge the Agencies to extend their public meeting schedule to ensure substantial public feedback and stakeholder input is collected. Therefore, we request the Agencies to provide a 60-day extension of the current 30-day comment period to provide stakeholders with adequate time to develop and submit written recommendations on the definition and implementation of a revised WOTUS rule, as has been offered by previous administrations. For example, the Agencies under the prior administration provided a 90-day comment period for stakeholders to submit written recommendations, and the Agencies should also do so here.<sup>6</sup>

Additionally, the Notice announced plans to host ten regional roundtables to “highlight similarities and differences across geographic regions.”<sup>7</sup> We agree with the critical need to consider regional variability across geographic areas in the definition of WOTUS. Consequently, stakeholder and community outreach of this kind must be extensively and thoroughly solicited to ensure meaningful input on regional variabilities is collected, and adequate time must be provided for the public to provide such input. We request that the Agencies provide further information and specifics about the timelines, structure, and scope of these regional roundtables.

We urge the Agencies to implement a robust operation to effectively collect meaningful stakeholder outreach, as public input from stakeholders who will be most affected is crucial to any transparent rulemaking process. The Agencies need to then incorporate this feedback into the proposed and final rulemaking and provide detailed explanations and rationales as to how stakeholder concerns will be addressed. As the Congressional committee in the House of Representatives with jurisdiction over clean water regulatory programs at EPA and the Corps, we and several other members of Congress have previously expressed our grave concerns with the Administration’s plans to revise the Navigable Waters Protection Rule in a recent letter to the Agencies, a copy of which is incorporated by reference and also enclosed with this letter.<sup>8</sup> We will continue to closely monitor the Agencies’ outreach process as a new rulemaking is initiated to help

---

<sup>3</sup> Notice, *supra* note 1 at 41914.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 41912-41914.

<sup>6</sup> Notice of Definition of “Waters of the United States” – Schedule of Public Meetings, 82 Fed. Reg. 40742 (August 28, 2017).

<sup>7</sup> Notice, *supra* note 1 at 41914.

<sup>8</sup> Letter from Members of Congress to Administrator Regan, EPA, and Acting Assistant Secretary Pinkham, Army Corps, (June 25, 2021), available at [https://republicans-transportation.house.gov/uploadedfiles/2021-06-25\\_wotus\\_letter.pdf](https://republicans-transportation.house.gov/uploadedfiles/2021-06-25_wotus_letter.pdf).

ensure the Agencies' outreach activities will lead to the development of a balanced, well-informed record on which to base the development of any rule revisions.

In order to ensure these items are formally incorporated into the rulemaking record, we will be submitting, into the rulemaking docket, both this letter and the enclosed prior letter that we and several other members of Congress wrote earlier this year regarding changes to WOTUS to ensure the American people are aware of Congress's concerns with the current approach. If you have questions, please contact Ryan Hambleton, Republican Staff Director, Subcommittee on Water Resources and Environment, at (202) 225-9446.

Thank you for your prompt attention to this important matter.

Sincerely,



---

Sam Graves  
Ranking Member



---

David Rouzer  
Ranking Member  
Subcommittee on Water Resources  
and Environment

cc: Damaris Christensen  
Office of Water, U.S. Environmental Protection Agency  
Stacey Jensen  
Office of the Assistant Secretary of the Army for Civil Works, Department of the Army  
Attention: Docket ID No. EPA-HQ-OW-2021-0328

Enclosure: Letter from Members of Congress to Administrator Regan, EPA,  
and Acting Assistant Secretary Pinkham, Army Corps, (June 25, 2021).

**Congress of the United States**  
**Washington, DC 20515**

June 25, 2021

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, D.C. 20460

Mr. Jaime Pinkham  
Acting Assistant Secretary of the Army  
for Civil Works  
108 Army Pentagon  
Room 3E446  
Washington, DC 20310-0108

Dear Administrator Regan and Acting Assistant Secretary Pinkham:

We are writing to you in response to the June 9, 2021 announcement by the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (collectively, the “Agencies”) regarding the Agencies’ intent to revise the definition of the “waters of the United States” (WOTUS) under the *Clean Water Act*.<sup>1</sup> This could negatively impact the Navigable Waters Protection Rule, which the Trump Administration issued to provide long-awaited clarity on the extent of waters covered by the *Clean Water Act* for farmers, homeowners, private property owners, manufacturers, small businesses, water districts, and local governments while maintaining the United States’ world-renowned standards of environmental protection.<sup>2</sup>

We are concerned that the approach the Agencies intend to take in revising this important regulation will regress from the clarity provided by the Navigable Waters Protection Rule, and will reimpose a vastly overbroad interpretation of Federal jurisdiction over waters around the Nation. We are also concerned that, rather than soliciting and genuinely listening to input from the general public, small businesses, regulated community, and Federal and state resource agencies regarding the appropriate scope of *Clean Water Act* jurisdiction and the range of issues to be covered by those regulations, the Agencies intend to proceed with a rulemaking that will once again confuse regulated parties and lead to the same misinterpretations of legal standards as the Obama Administration’s WOTUS rule.<sup>3</sup> We are gravely concerned that the Agencies will let the flawed Obama WOTUS rule dictate the scope and content of any new rule the Agencies might now promulgate. The Agencies must *not* let institutional capture predetermine the outcome of a rulemaking, which we fear is going to happen here.

Public input from those stakeholders who will be most affected by a new regulation is crucial to any transparent rulemaking process. It is essential that, before the Agencies begin drafting any new rule, they first issue an advance notice of proposed rulemaking (ANPRM) to

---

<sup>1</sup> Press Release, EPA, *Army Announce Intent to Revise Definition of WOTUS*, June 9, 2021, available at <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus>; see, e.g., 33 CFR § 328.3; 33 U.S.C. §1251 et seq.

<sup>2</sup> *The Navigable Waters Protection Rule: Definition of “Waters of the United States,”* Final Rule, 85 Fed. Reg. 22250 (Apr. 21, 2020).

<sup>3</sup> *Clean Water Rule: Definition of “Waters of the United States,”* Final Rule, 80 FR 37054 (June 29, 2015) (Obama Administration WOTUS rule).

solicit input from the general public, regulated community, and resource agencies on the scope of *Clean Water Act* jurisdiction and the range of issues to be covered by the regulations, to support any revisions to the definition of “waters of the United States.”<sup>4</sup> If the Agencies decide to move forward with a rulemaking after the ANPRM, we expect they will undertake a robust economic analysis, including a cost-benefit analysis, for whatever proposed rule might be developed. This economic analysis must include an accurate quantification and monetization of the consequences anticipated from the proposed rule.<sup>5</sup>

In addition, the *Regulatory Flexibility Act* requires the Agencies to assess the impact of this proposed regulation on “small entities,” which are defined as including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations.<sup>6</sup> Because of the scope of this rule and the way in which “waters of the U.S.” has previously been expanded, we expect to see a thorough regulatory flexibility analysis of the economic impact on small entities. Finally, because of the EPA’s role in this rulemaking, we expect that the Agencies will convene an “advocacy review panel” pursuant to the *Small Business Regulatory Enforcement Fairness Act*’s requirement to hear from representatives of small entities affected by the proposed rule.<sup>7</sup> We are hopeful that the Agencies will not again fail to calculate the significant impact of this rule like they did in 2014, leading to a failure to hold a small business advocacy review panel in the future.<sup>8</sup>

The Obama Administration’s overreaching WOTUS rule had a disastrous effect on farmers, businesses, and families.<sup>9</sup> That rule drew substantial opposition from states, local governments, and citizens across the Nation challenging the overbreadth of the definitions included.<sup>10</sup> The regulatory burden placed on average Americans and the effect on the economy would be detrimental if the Agencies were to remove the definitions included in the Navigable Waters Protection Rule, especially as we look to restart the economy after the COVID-19 pandemic. If we want to help get Americans back to work, the Administration cannot continue to propose partisan executive and legislative actions which will only slow down or reverse the economic recovery. Instead, we must have reasonable regulation to enable Americans to thrive and to grow our Nation’s economy, including in rural and other underserved parts of the country. To do this, the Agencies must keep in mind the multitude of concerns and issues previously raised about the Obama Administration’s WOTUS rule and maintain the updated definitions of the Navigable Waters Protection Rule.

Regulation of the Nation’s waters must be done in a manner that responsibly protects the environment without unnecessary and costly expansion of the Federal government in order to prevent unreasonable and burdensome regulations and to protect small businesses, farmers, and families. Consequently, it is critical that the Agencies take the proper steps to ensure that any

---

<sup>4</sup> See 5 U.S.C. § 553.

<sup>5</sup> See OMB Circular A-4, Executive Order 12866, and Executive Order 13563.

<sup>6</sup> 5 U.S.C. §§601-612.

<sup>7</sup> 5 U.S.C. § 609(b).

<sup>8</sup> SBA Office of Advocacy letter to Administrator McCarthy (Oct. 1, 2014), available at [https://www.sba.gov/sites/default/files/Final\\_WOTUS%20Comment%20Letter.pdf](https://www.sba.gov/sites/default/files/Final_WOTUS%20Comment%20Letter.pdf).

<sup>9</sup> American Farm Bureau Federation “Clean Water Act, WOTUS,” available at <https://www.fb.org/issues/regulatory-reform/clean-water-act/>.

<sup>10</sup> Snider, Annie, “9 more states sue Obama admin over hot-button rule,” *Greenwire*, June 30, 2015.

new regulations provide an appropriate and clear definition of “waters of the United States,” and be consistent with the *Clean Water Act* and the governing U.S. Supreme Court decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* and *Rapanos v. United States* concerning the extent of waters covered by the Act.<sup>11</sup>

We will be closely monitoring the process as a new rulemaking is initiated. We are aware this is a significant rulemaking and we strongly urge the Agencies to maintain the positive changes that were put into place under the Trump Administration’s Navigable Waters Protection Rule. This Administration must cast aside ideological biases and carefully consider how this regulatory action will impact those who must live and work under this rule. With all the other crises confronting our nation, it makes little sense to unravel a final rule that has taken decades of Agency action, litigation, and legislation to settle. Instead, we encourage the Administration to focus its attention and resources on the more pressing economic and international issues confronting our nation such as inflation, the border crisis, the safety of our communities, reopening schools, and protecting America from our adversaries who seek to do us harm.

Thank you for your prompt attention to this matter.

Sincerely,



---

Sam Graves  
Ranking Member  
Committee on Transportation  
and Infrastructure



---

David Rouzer  
Ranking Member  
Subcommittee on Water Resources and  
Environment



---

GT Thompson  
Ranking Member  
Committee on Agriculture



---

Cathy McMorris Rodgers  
Ranking Member  
Committee on Energy and Commerce

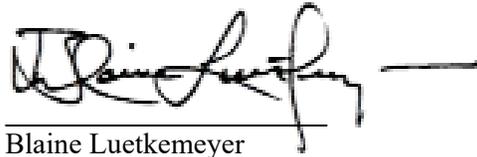
---

<sup>11</sup> *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001); *Rapanos v. United States*, 547 U.S. 715 (2006).



---

Bruce Westerman  
Ranking Member  
Committee on Natural Resources



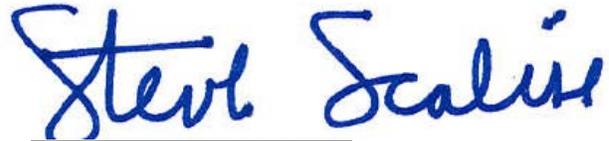
---

Blaine Luetkemeyer  
Ranking Member  
Committee on Small Business



---

Kevin McCarthy  
Republican Leader



---

Steve Scalise  
Republican Whip



---

Elise Stefanik  
Republican Conference Chair



---

Tom McClintock  
Member of Congress



---

Louie Gohmert  
Member of Congress



---

Doug Lamborn  
Member of Congress



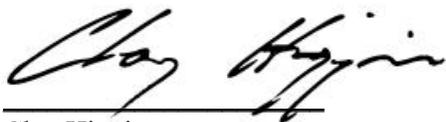
---

Dan Newhouse  
Member of Congress



---

Kat Cammack  
Member of Congress



---

Clay Higgins  
Member of Congress



---

Mike Rogers  
Member of Congress



Tim Burchett  
Member of Congress



Steve Chabot  
Member of Congress



August Pfluger  
Member of Congress



Pete Stauber  
Member of Congress



Eric A. "Rick" Crawford  
Member of Congress



Mike Bost  
Member of Congress



Scott Perry  
Member of Congress



Tom Rice  
Member of Congress



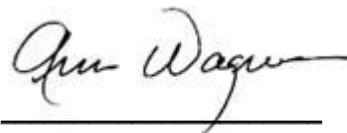
Bob Gibbs  
Member of Congress



Beth Van Duyne  
Member of Congress



Dusty Johnson  
Member of Congress



Ann Wagner  
Member of Congress



Michael C. Burgess, M.D.  
Member of Congress



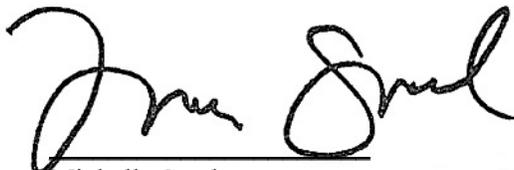
Russ Fulcher  
Member of Congress



Jay Obernolte  
Member of Congress



Troy Nehls  
Member of Congress



Michelle Steel  
Member of Congress



Chris Stewart  
Member of Congress



Paul Gosar  
Member of Congress



Ashley Hinson  
Member of Congress



Ben Cline  
Member of Congress



Greg Pence  
Member of Congress



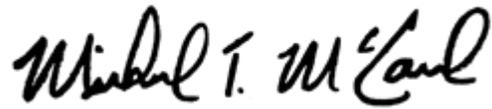
Rick Allen  
Member of Congress



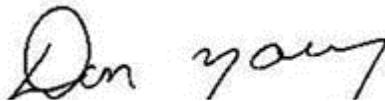
Doug LaMalfa  
Member of Congress



Barry Loudermilk  
Member of Congress



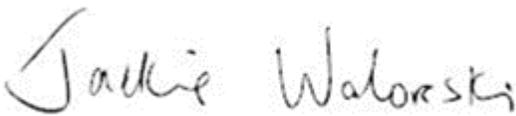
Michael T. McCaul  
Member of Congress



Don Young  
Member of Congress



Austin Scott  
Member of Congress



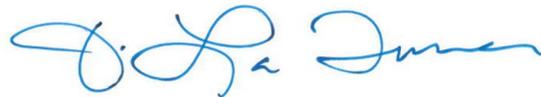
Jackie Walorski  
Member of Congress



Liz Cheney  
Member of Congress



Rob Wittman  
Member of Congress



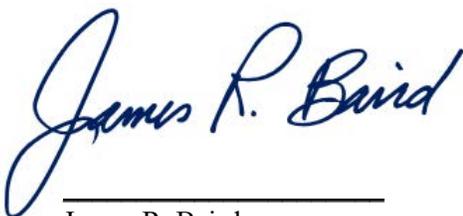
Jake LaTurner  
Member of Congress



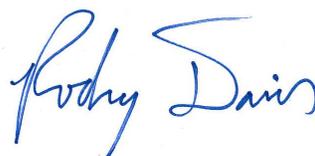
Ted Budd  
Member of Congress



John Joyce  
Member of Congress



James R. Baird  
Member of Congress



Rodney Davis  
Member of Congress



---

Jodey C. Arrington  
Member of Congress



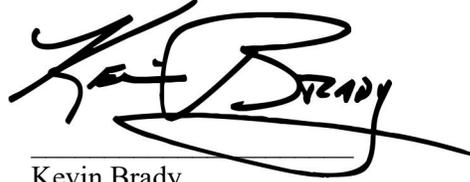
---

Diana Harshbarger  
Member of Congress



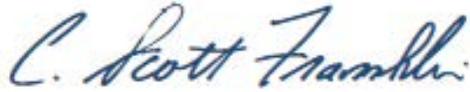
---

Tom Emmer  
Member of Congress



---

Kevin Brady  
Member of Congress



---

Scott Franklin  
Member of Congress



---

Richard Hudson  
Member of Congress



---

David Kustoff  
Member of Congress



---

Ken Calvert  
Member of Congress



---

Kevin Hern  
Member of Congress



---

Robert Latta  
Member of Congress



---

Chris Jacobs  
Member of Congress



---

Daniel Webster  
Member of Congress



---

Pete Sessions  
Member of Congress



---

Lauren Boebert  
Member of Congress



---

Tom Cole  
Member of Congress



---

Matthew Rosendale  
Member of Congress



---

Troy Balderson  
Member of Congress



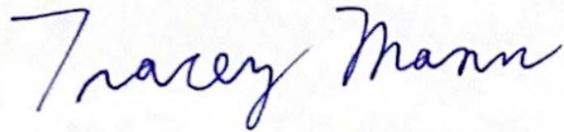
---

Michael Cloud  
Member of Congress



---

Jeff Duncan  
Member of Congress



---

Tracey Mann  
Member of Congress



---

Mo Brooks  
Member of Congress



---

Mike Kelly  
Member of Congress



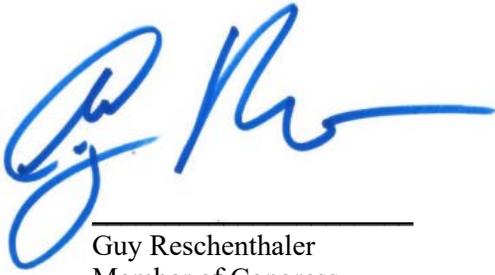
---

Buddy Carter  
Member of Congress



---

Jerry Carl  
Member of Congress



---

Guy Reschenthaler  
Member of Congress



---

Michelle Fischbach  
Member of Congress



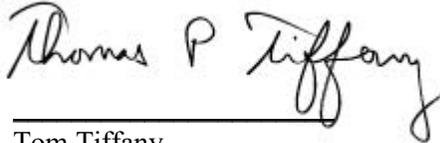
---

James Comer  
Member of Congress



---

Brian Babin  
Member of Congress



---

Tom Tiffany  
Member of Congress



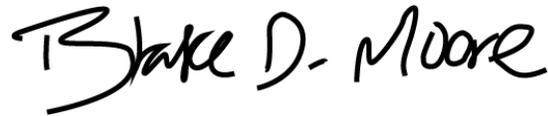
---

Cliff Bentz  
Member of Congress



---

Julia Letlow  
Member of Congress



---

Blake Moore  
Member of Congress



---

Mariannette Miller-Meeks  
Member of Congress



---

James Comer  
Member of Congress



---

Vicky Hartzler  
Member of Congress



---

Glenn Grothman  
Member of Congress



Darin LaHood  
Member of Congress



Jim Hagedorn  
Member of Congress



Robert Aderholt  
Member of Congress



Randy Feenstra  
Member of Congress



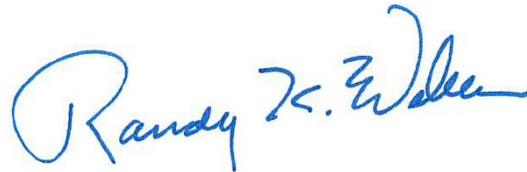
Bill Johnson  
Member of Congress



Gus Bilirakis  
Member of Congress



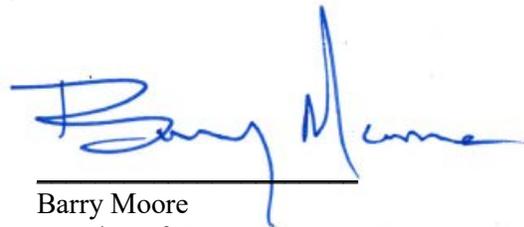
Marjorie Taylor Greene  
Member of Congress



Randy Weber  
Member of Congress



Mark Amodei  
Member of Congress



Barry Moore  
Member of Congress



Michael Guest  
Member of Congress

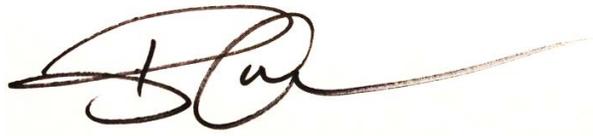


Debbie Lesko  
Member of Congress



---

Jack Bergman  
Member of Congress



---

Burgess Owens  
Member of Congress



---

Adam Kizinger  
Member of Congress



---

David G. Valadao  
Member of Congress



---

Frank Lucas  
Member of Congress



---

Adrian Smith  
Member of Congress



---

Garret Graves  
Member of Congress



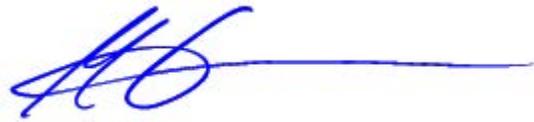
---

Stephanie Bice  
Member of Congress



---

Darrell Issa  
Member of Congress



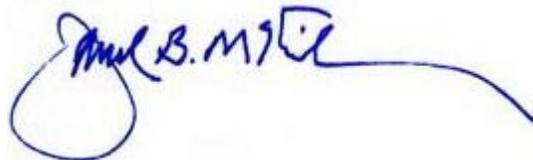
---

Mike Gallagher  
Member of Congress



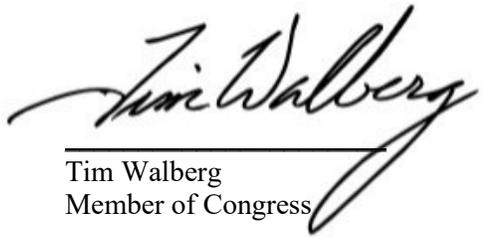
---

William Timmons  
Member of Congress



---

David McKinley  
Member of Congress



---

Tim Walberg  
Member of Congress



---

Lisa McClain  
Member of Congress



---

Claudia Tenney  
Member of Congress



---

Young Kim  
Member of Congress



---

Thomas Massie  
Member of Congress



---

Dan Bishop  
Member of Congress



---

Mark Green  
Member of Congress



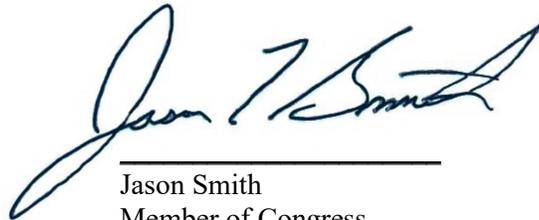
---

Jim Banks  
Member of Congress



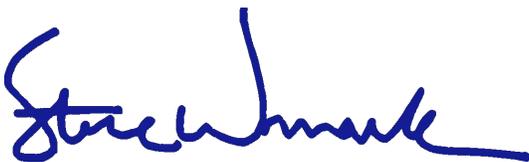
---

Bill Posey  
Member of Congress



---

Jason Smith  
Member of Congress



---

Steve Womack  
Member of Congress



---

Chuck Fleischmann  
Member of Congress



---

Andrew Garbarino  
Member of Congress



---

Ralph Norman  
Member of Congress