

**To:** McDonough, Owen[OMcDonough@nahb.org]  
**Cc:** Briggs, Courtney[CBriggs@nahb.org]  
**From:** Jackson, Ryan  
**Sent:** Mon 4/24/2017 8:49:57 AM  
**Subject:** Re: RE:

Thanks for this.

Ryan Jackson  
Chief of Staff  
U.S. EPA

Ex. 6 - Personal Privacy

On Apr 23, 2017, at 8:41 PM, McDonough, Owen <OMcDonough@nahb.org> wrote:

Ryan,

Considering there is no nationwide baseline of waters that were jurisdictional before the 2015 rule, it is challenging to determine the costs builders and developers would incur as a result of the regulation.

However, we know that the rule would categorically assert jurisdiction over many more "tributaries" and "adjacent" waters that previously would have had to meet a case-by-case significant nexus test. We also know that some of these now categorically jurisdictional waters would have failed the significant nexus test and not been WOTUS prior to the 2015 rule. For instance, a review of 16 significant nexus approved jurisdictional determinations (AJDs) performed on ephemeral streams in the arid Southwest prior to the 2015 rule found that 15 of the 16 did not satisfy the test and were not jurisdictional. Under the 2015 rule, however, all 16 would be categorically jurisdictional under the "tributary" definition.

In another example of expanded jurisdiction, NAHB compared a pre-2015 rule AJD for wetlands at a residential subdivision in Florida to determine the impact of the "adjacent" and "neighboring" definitions. Under the 2015 rule, we found the total area of jurisdictional wetlands would increase by approximately 30% (48.40 acres to 62.86 acres) and encompass 100% of the total wetland acreage at the site. Clearly, the results of these two case studies are inconsistent with the Agencies' estimate of an increase between 2.84 and 4.65 percent in positive JDs annually.

As more features are deemed jurisdictional, more projects require federal permits. As you know, obtaining these permits is difficult and can generate significant project delays and costs. A 2002 study found that it takes an average of 788 days and \$271,596 to obtain an individual CWA permit and 313 days and \$28,915 for a "streamlined" nationwide permit. (*David Sunding & David Zilberman, The Economics of Environmental Regulations by Licensing: An Assessment of Recent Changes to the Wetland Permitting Process, 42 Nat. Resources J, 59-90 at 74 (2002)*). Importantly,

these figures don't take into account the cost of mitigation, which can be exorbitant, ranging from an estimated \$24,989 to \$49,207 per acre nationwide.

Ultimately, increased costs and delays as a result of permits and mitigation are detrimental to housing affordability. As the price of the home increases, those on the verge of qualifying for a new home will no longer be able to afford it. An analysis done by NAHB illustrates the number of households priced out of the market for a median priced new home due to a \$1,000 price increase. Nationally, this price difference means that when a median new home price increases from \$225,000 to \$226,000, some 232,447 households can no longer afford that home.

Please let me know if you've got any questions or would like to discuss any of the above info further.

Best,

Owen

Owen McDonough, PhD

Environmental Policy Program Manager

National Association of Home Builders

OWEN MCDONOUGH Program Manager, Environmental Policy

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**From:** Briggs, Courtney

**Sent:** Friday, April 21, 2017 1:51 PM

**To:** Jackson, Ryan; McDonough, Owen

**Subject:** Re:

Owen- can you answer Ryan? Thanks.

Sent from my iPhone

COURTNEY G. BRIGGS Director, Federal Legislative

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- > On Apr 21, 2017, at 1:50 PM, Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)> wrote:
- >
- > Hey Courtney, would NAHB have costs to the home building industry expected or initially incurred due to cost of permitting or new permitting under Wotus?
- >
- > Ryan Jackson
- > Chief of Staff
- > U.S. EPA

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