

Congress of the United States
Washington, DC 20515

June 30, 2011

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army
for Civil Works
108 Army Pentagon
Room 3E446
Washington, DC 20310-0108

Dear Administrator Jackson and Assistant Secretary Darcy:

We are writing to urge that the Environmental Protection Agency (EPA) and Army Corps of Engineers promptly terminate any attempt to adopt or enforce any change in jurisdiction to waters under the Clean Water Act (CWA), unless and until Congress gives you the proper authority to do so.

The proposed 'guidance' introduced by the EPA and Army Corps on April 27, 2011 will substantively change federal policy with respect to which waters fall under the jurisdiction of the CWA, significantly increasing the scope of the federal government's power to regulate waters. Furthermore, it will significantly expand the federal government's regulatory reach on private property.

As a result, constituents in our states will be subject to federal enforcement of onerous permitting requirements that demand a substantial expenditure of time and money. Even where jurisdiction is in question, the federal agencies have shifted the burden to landowners and permit applicants to establish that jurisdiction is not appropriate.

We also believe that the decision to issue guidance on this topic, as opposed to a notice-and-comment rulemaking, violates requirements of the Administrative Procedures Act, which is designed to ensure public input and a full assessment of the economic impacts before making any final agency decisions. Despite repeated claims by the agencies that they would undertake a formal rulemaking, they have not.

Legislative attempts to expand this authority have been met with strong bipartisan resistance in previous Congresses and, in April of this year, a bipartisan letter signed by 170 Members of Congress was sent to the EPA and Army Corp of Engineers. The letter expressed serious concerns about the expansion of federal jurisdiction without following the proper rulemaking process.

There is no doubt that the extent of waters over which the agencies assert jurisdiction under the CWA will increase with this guidance. This expansion of jurisdiction goes beyond what Congress intended under the CWA and beyond the Supreme Court's decisions in *Rapanos* and *SWANCC*. Furthermore, the guidance will have material economic impacts, which EPA itself has acknowledged. The agencies, however, have failed to provide an adequate economic impact analysis in light of the broad scope of changes encompassed by the guidance.

The Department of the Interior, as you know, created a 'wild lands' classification last year—without any congressional authority to do so. Members of the Western Caucus swiftly acted to defund the program in the FY11 appropriations bill. Similar threats to usurp congressional authority, including the aforementioned guidance, are already facing similar defunding efforts in the Appropriations Committee. As such, we urge your prompt termination of any attempt to adopt or enforce any change in jurisdiction to waters under the Clean Water Act, unless and until Congress gives you the proper authority to do so.

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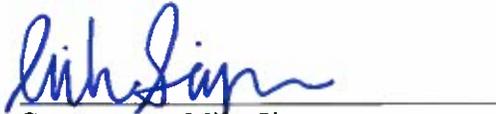
While you are considering this request, we also urge that you extend by 90 days the comment period on the proposed guidance regarding identification of waters protected by the CWA. Although we do not believe you have any authority to issue such guidance, those who will be heavily impacted have not had an acceptable amount of time to digest and respond to this complex and far-reaching proposal. If you believe, as we do, that public input is important to developing sound public policy, then you will grant them the time necessary to respond.

Thank you for your time and attention to our request. We look forward to your expeditious reply.

Sincerely,


Congressman Denny Rehberg


Congressman Steve Pearce


Congressman Mike Simpson


Congressman Rob Bishop


Congressman Cynthia Lummis


Congressman Greg Walden


Congressman Tom McClintock

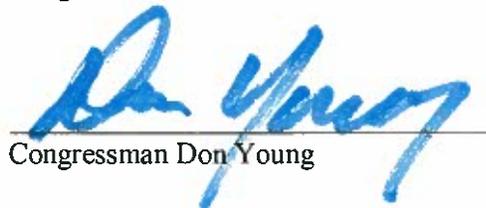

Congresswoman Cathy McMorris-Rodgers


Congressman Jason Chaffetz


Congressman Mac Thornberry


Congressman Mike Coffman


Congressman Raul Labrador


Congressman Don Young


Congressman Jeff Denham