

Congress of the United States
Washington, DC 20510

May 8, 2014

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

Dear Administrator McCarthy,

As members of the Senate and Congressional Western Caucuses, we are contacting you regarding our opposition to the Environmental Protection Agency's (EPA) efforts to significantly expand federal regulatory authority under the Clean Water Act (CWA).

We have reviewed the proposed rule that you signed on March 25th and have concluded that the rule provides essentially no limit to CWA jurisdiction. This is despite the Supreme Court consistently recognizing that Congress limited the authority of the EPA and the Army Corps of Engineers under the CWA.

There has been strong opposition to EPA's approach due to the devastating economic impacts that a federal takeover of state waters would have. Additional and substantial regulatory costs associated with changes in jurisdiction and increased permitting requirements will result in bureaucratic barriers to economic growth, negatively impacting farms, small businesses, commercial development, road construction and energy production, to name a few.

The threat of ruinous penalties for alleged noncompliance with the CWA is also likely to become more common given the proposed rule's expansive approach. For example, the EPA's disputed classification of a small, local creek as a "water of the United States" could cost as much as \$187,500 per day in civil penalties for Wyoming resident Andrew Johnson. Similar uncertainty established under the proposed rule will ensure that expanding federal control over intrastate waters will substantially interfere with the ability of individual landowners to use their property.

We share the concerns expressed by the Western Governors Association regarding the lack of meaningful state consultation in crafting this rule. The Western Governors stated in a letter to you on March 25th that they –

“are concerned that this rulemaking was developed without sufficient consultation with the states and that the rulemaking could impinge upon state authority in water management.”

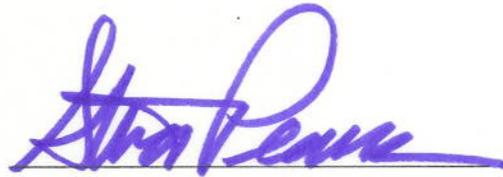
We fail to understand why the EPA has not adequately consulted our Governors about a rule that has such a significant impact on the economy of our states. For example, rural states in the West have sizeable ranching and farming operations that will be seriously impacted by this rule. Despite the claim that the Army Corps will exempt 53 farming practices as established by the Natural Resource Conservation Service, the list of 53 does not cover all existing agricultural practices. There are a number of farming and ranching practices, such as the application of pesticides, that are not covered on this list that occur every day in the West without penalty. Under this new proposed rule, it appears those farmers and ranchers will need to get a permit or be penalized if they continue to use those non-covered practices in new federal waters.

Congress has demonstrated strong opposition to past efforts to have the federal government control all wet areas of the states. During the recent consideration of the Water Resources Development Act (WRDA), a bipartisan group of Senators voted 52 to 44 to reject the EPA's CWA Jurisdiction Guidance, which would have also resulted in effectively unlimited jurisdiction over intrastate water bodies. Efforts to pass legislation to have the federal government control all non-navigable waters have also failed in past Congresses.

We urge you to change course by committing to operating under the limits established by Congress, recognizing the states' primary role in regulating and protecting their streams, ponds, wetlands and other bodies of water. We also again ask that you consider the economic impacts of your policies knowing that your actions will have serious impacts on struggling families, seniors, low-income households and small business owners.

Sincerely,

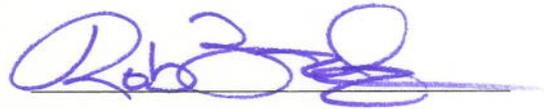












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