



November 14, 2011

Dear Senator,

The Waters Advocacy Coalition ("WAC") writes to ask for your support in stopping the Environmental Protection Agency ("EPA") and the U.S. Army Corps of Engineers ("Corps") from expanding the federal government's regulation of private and public lands under the Clean Water Act (CWA). The undersigned organizations urge you to vote in support of the Barrasso/Heller amendment to the Energy and Water Minibus. The amendment prohibits use of any funds to implement the agencies' fast-track attempt to federalize our nation's waters and lands, resulting in a dramatic impact on job creation and our nation's already struggling economy.

Action by the EPA or the Corps would undermine recent Supreme Court decisions and ignore Congressional intent under the CWA. The Supreme Court has twice affirmed that both the U.S. Constitution and CWA place limits on federal authority over intrastate waters – thus ratifying a provision of law that has been in place for nearly four decades. Congress has declined to consider legislative attempts that modify the Supreme Court decisions or to alter this careful balance between federal and local authority in any way. Now, however, EPA and the Corps apparently want to substitute their own judgment for that of Congress. Our concern is that such an assertion of jurisdiction by EPA and the Corps will create significant problems in many watersheds nationwide. It would almost invariably be a hindrance if not an outright barrier to economic growth. It would almost certainly result in both a permitting and enforcement tangle that could impact job retention and creation. It would switch the burden from the government to the individual property owner to demonstrate that a particular feature is not a "water of the United States." Given the history of the CWA, these proposals would undoubtedly increase litigation and expenses for private property owners, the regulated community, and regulatory agencies. More importantly, this harmful policy would place excessive burdens on businesses in all sectors of the economy which could lead to the freezing of any growth and productivity.

EPA has signaled it intends to fast-track its proposed CWA Guidance document into a formal rulemaking, bypassing required public outreach and failing to fully consider the economic implications on the entire range of CWA programs. We believe such significant regulatory decisions that will hurt communities across the country require time and input from affected parties and Congress. Expanding federal control over intrastate waters will substantially interfere with the ability of individual landowners to use their private property and will significantly impair job creation from private and public investments in development and infrastructure projects including housing, schools, hospitals, roads, highways, agriculture and energy.

Expanding federal authority over intrastate waters will create significant regulatory barriers to economic growth throughout an already struggling economy. We urge you to vote in support of the Barrasso/Heller amendment.

Sincerely,

Agricultural Retailers Association
American Farm Bureau Federation®
American Forest & Paper Association
American Iron and Steel Institute
American Petroleum Institute
American Road & Transportation Builders Association
The Associated General Contractors of America
CropLife America
The Fertilizer Institute
Florida Sugar Cane League
Foundation for Environmental and Economic Progress
Industrial Minerals Association – North America
International Council of Shopping Centers
Irrigation Association
National Association of Home Builders
NAIOP, the Commercial Real Estate Development Association
National Association of Manufacturers
National Association of REALTORS®
National Association of State Departments of Agriculture
National Cattlemen's Beef Association
National Corn Growers Association
National Council of Farmer Cooperatives
National Milk Producers Federation
National Mining Association
National Multi Housing Council
National Pork Producers Council
National Stone, Sand and Gravel Association
Public Lands Council
Responsible Industry for a Sound Environment
Southern Crop Production Association
United Egg Producers
Western Business Roundtable