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March 28, 2008

Senator John Barrasso
307 Dirksen Senate Office Bldg
Washington, DC 20510

Dear Senator Barrasso:

I am writing today to express our reservation and concerns regarding the upcoming committee hearing to advance the Clean Water Restoration Act. As we see this issue;

Issue:

The Wyoming Association of Rural Water Systems opposes any legislative efforts which would expand the federal Clean Water Act (CWA) jurisdiction over all waters within the United States, including all intrastate waters.

Background:

- While the Supreme Court decision, *Rapanos v. United States*, failed to set forth one clear standard for CWA jurisdiction, the unifying theme of all Justices was not that the Clean Water Act needed to be amended, but rather that the Corps of Engineers and the EPA should issue new regulations. As Justice Breyer who sided with the dissent observed, the agencies should "write new regulations, and speedily so."
- Legislation previously introduced in the House and Senate would:
 - Grant EPA and the Corps virtually unlimited regulatory control over all "intrastate waters" – essentially all wet areas within a state including groundwater, ditches, pipes, streets, gutters, and desert features.
 - Grant EPA and the Corps unrestricted authority to regulate all *activities* (private or public) that may affect intrastate waters, regardless of whether the activity is occurring in or may impact water at all.
 - Eliminate the existing regulatory limitations authorized by both Democratic and Republican administrations allowing commonsense uses such as prior converted cropland and waste treatment systems.
 - Fail to clarify any limits on federal authority.

Concerns with Legislation:

- EPA and the Corps of Engineers will exercise unlimited regulatory authority over all intrastate waters, including, for example, waters now considered entirely under state jurisdiction. Enormous resources will be needed to expand and defend the federal regulatory program, exacerbating an existing CWA funding gap and leading to longer permitting delays.

- Increased delays in securing permits will impede a host of economic activities commercial – and residential real estate development, agriculture, electric transmission, transportation, mining will all be affected.
- An expanded federal water program would impose an unfunded mandate on States by increasing the number of waters subject to water quality standards, the setting of Total Maximum Daily Loads (TMDLS), and expanding the permitting workload under various aspects of the state-administered programs.
- Expanded federal jurisdiction would pre-empt state and local governments from making local land and water use decisions and alter balance of federal and state authority established when the Clean Water Act was first enacted and reaffirmed during subsequent reauthorizations.
- Litigation will increase as the government and stakeholders struggle to clarify the uncertain scope of constitutional authority.

Recommendations:

- Congress should not rush to change the jurisdictional reach of the Clean Water Act.
- Wyoming Association of Rural Water Systems (WARWS) does not believe that it is in the nation's interest to regulate ditches, culverts and pipes, desert washes, dry arroyos, farmland and treatment ponds as "waters of the United States" and therefore subjecting such waters to all of the requirements of federal regulation.

Respectfully,

(Transmitted via email)

Mark Pepper
Executive Director