



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

MAY 14 2015

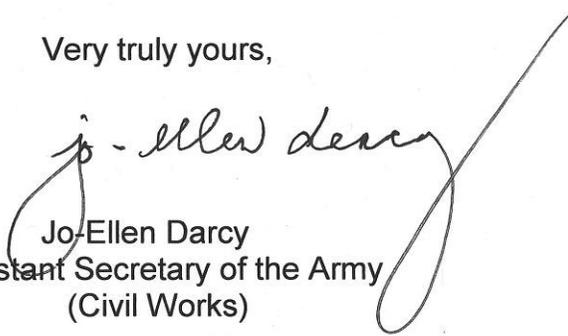
The Honorable Mike Rounds
United States Senate
SR-C4 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Rounds:

Thank you for your letter dated March 11, 2015, regarding the joint agency rulemaking to clarify the geographic scope of Clean Water Act (CWA) jurisdiction by the Army and the U.S. Environmental Protection Agency (EPA). Responses to your specific questions are included in the Enclosure to this letter.

Your continued interest in the proposed rule is appreciated and we value your willingness to share any additional thoughts and concerns you might have during the rulemaking process and initial implementation period. If you have any questions on this important issue, please feel free to contact me or Mr. Chip Smith in the Office of the Assistant Secretary of the Army (Civil Works) at: charles.r.smith567.civ@mail.mil or (703) 693-3655.

Very truly yours,


Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

Enclosure

1. Approximately what percentage of comments regarding the proposed rule has the Corps of Engineers reviewed thus far?

Answer: Of the approximately 1,000,000 comment letters received on the proposed rule, approximately 20,567 comment letters are posted to the public docket. The Corps has reviewed the comment letters posted to the docket, which represent approximately 2% of the total comments received. These 2% constitute the unique comment letters received on the proposed rule, which is further explained below.

a. Were the comments that were reviewed unique and substantive comments or were they part of a mass campaign? In addition, can you please explain to me the difference between a unique and substantive comment and a mass campaign? Is a mass campaign essentially multiple copies of the same comment?

Answer: Of the approximately 1,000,000 comment letters received on the proposed rule, the docket only posts those that are considered unique. The docket generally includes only one copy of mass mailing campaign or form letters. Mass mail-in campaign and form letters are letters with the same exact language that are sent in multiples; if a letter contains any language that is different from the standard form letter, such a letter would be considered unique.

The unique comment letters provide insight into themes related to the proposed rule, and identify broad areas of concern and support for the proposed rule. All unique comment letters, including one copy of each mass mailing letter, were reviewed. In addition, substantive comment letters were identified as a subset of the unique comment letters. Substantive comments contain specific concerns or issues relative to the proposed rule, specific language additions or modifications, information on unintended consequences of the proposed rule, as well as specific areas of support for the proposed rule. Such substantive comments and input are considered in developing the final rule language.

2. Please tell me how many unique and substantive comments the Corps of Engineers and EPA have received on the proposed Waters of the United States rule.

Answer: There are 20,567 unique comment letters posted to the docket, which is approximately 2% of the total comment letters received. Of these unique comment letters, approximately 10% were considered substantive.

a. Do those unique and substantive comments constitute the 2 percent of comments that the Corps has reviewed?

Answer: Yes; see response to question 1 above.

b. Is it accurate to say that the Corps of Engineers has reviewed all of the unique and substantive comments?

Answer: Yes; see response to question 1 above.

3. Of the unique and substantive comments received, please tell me how many supported the rule and how many opposed the rule.

Answer: Of the unique comment letters, 39% are in support of the proposed rule, 60% of the unique comments are opposed to the proposed rule, and the remaining 1% are neutral.

4. When the Corps of Engineers reviews comments, is your consideration influenced by the simple number of comments for and against the proposed rule, or by the thoughtful explanation of impacts of the proposed rule that EPA and the Corps may not have considered?

Answer: All comments posted to the docket were reviewed individually for substantive comments and are being considered by the Corps and EPA in the development of the final rule language.

The public comments posted to the docket help identify suggested language improvements, unintended consequences, specific constituent concerns, and implementation issues that should be addressed. These comments are considered and will be used to inform the final rule language.

The preamble to the final rule provides additional information and guidance to the agencies and the regulated public. A separate response to comments document is being prepared and will be published with the final rule and provides responses to the unique substantive comments received and an explanation of how the agencies considered and incorporated those comments into a final rule.

5. During meetings with stakeholders, do you or the Corps of Engineers specifically ask members of the public to provide substantive and thoughtful explanations of potential impacts?

Answer: During meetings with stakeholders, the Corps made clear that the discussion did not constitute or replace formal written comments submitted to the docket. The Corps encourages participants to submit written comments to the docket outlining their issues, concerns, suggested language, or support on aspects of the proposed rule.

