

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR  
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

March 5, 2014

Dear Colleague:

The Environmental Protection Agency (EPA) is moving forward with a rulemaking that will greatly expand federal jurisdiction under the Clean Water Act (CWA) by redefining which waters are deemed “waters of the United States” and are therefore subject to federal regulation. This expansion of federal jurisdiction will force many more of your state’s private property owners to obtain permission, from federal bureaucrats, for the beneficial use of their own property. On top of this, it will provide additional legal options for radical environmental groups to sue private property owners under the CWA’s citizen suit provisions. On May 14, 2013, a majority consisting of 52 Senators opposed EPA’s overreach.<sup>1</sup>

The Senate may soon vote on the nomination of Mr. Kenneth Kopocis to be the Assistant Administrator for EPA’s Office of Water. Mr. Kopocis has played a significant part in efforts to expand federal authority under the CWA, and we urge all members who voted in May against EPA’s CWA expansion, as well as all other members who are concerned with EPA’s overreach, to reject his nomination.

Previously in his career, Mr. Kopocis was instrumental in failed efforts to remove the term “navigable” from the CWA’s jurisdictional limitation to “navigable waters.”<sup>2</sup> In his current role as Senior Advisor for EPA’s Office of Water, Mr. Kopocis has been part of a bureaucratic team that views its regulatory authority as effectively unlimited. If confirmed, Mr. Kopocis will perform a key role in determining future regulatory policy, and there is every indication that he will continue to advance and support EPA’s march towards an expanded federal encroachment of private property. Accordingly, a vote in support of Mr. Kopocis would be an endorsement of EPA’s efforts to expand its authority.

EPA’s attempt to significantly expand its authority under the CWA began with the highly criticized “draft guidance document,” first promulgated in 2011.<sup>3</sup> However, the document could not stand up to the criticism it received, and EPA claimed to withdraw it in September 2013.<sup>4</sup> Even though EPA has purportedly withdrawn the draft guidance, the Agency is still pursuing its

<sup>1</sup> 159 CONG. REC. S3417-18 (daily ed. May 14, 2013) (Amendment No. 868).

<sup>2</sup> Paul Quinlan, *Obama’s Pick for Water Chief No Stranger to Controversy*, GREENWIRE, June 13, 2011, <http://www.eenews.net/greenwire/stories/1059950213/>.

<sup>3</sup> *Draft Guidance on Identifying Waters Protected by the Clean Water Act* (May 2, 2011), available at [http://www.epa.gov/tribal/pdf/wous\\_guidance\\_4-2011.pdf](http://www.epa.gov/tribal/pdf/wous_guidance_4-2011.pdf).

<sup>4</sup> E-mail from Denis R. Borum, Cong. Liaison Specialist, Office of Cong. and Intergovernmental Relations, U.S. Envtl. Prot. Agency, to Cong. Staff (Sept. 17, 2013, 12:51 EST) (on file with author).

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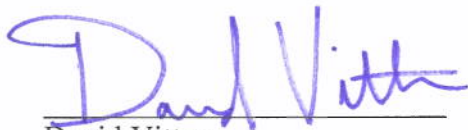
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preferred policy by moving forward with a rulemaking that encompasses the same flawed principles.<sup>5</sup>

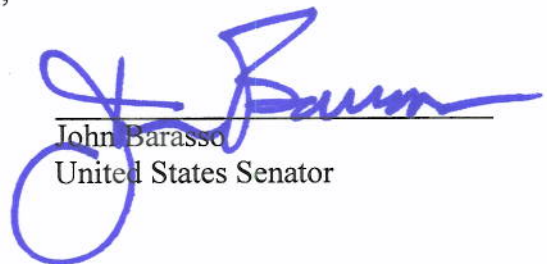
Both Congress and the U.S. Supreme Court have made it clear that there are limits to federal authority under the Clean Water Act.<sup>6</sup> Yet EPA refuses to listen. Instead, the Agency has drafted a sweeping regulation that would give EPA unprecedented power over private property rights and add further red tape to economic growth.

For our colleagues who voted in favor of changing the Senate rules,<sup>7</sup> this upcoming vote is an opportunity to make clear that you are not simply rubberstamping the President's policies when it comes to expanding EPA's reach over our nation's waters. A vote in favor of Mr. Kopocis should be viewed as a clear endorsement of the President's water policy. Accordingly, we urge you to oppose this nomination.

Sincerely,



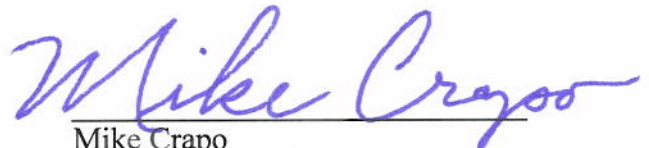
David Vitter  
Ranking Member  
Committee on Environment and Public Works



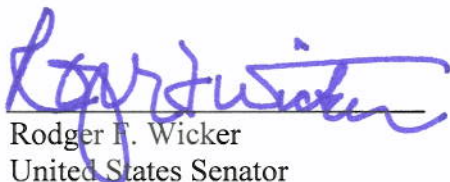
John Barasso  
United States Senator



James Inhofe  
United States Senator



Mike Crapo  
United States Senator



Rodger F. Wicker  
United States Senator



Deb Fischer  
United States Senator

<sup>5</sup> See Clean Water Act Definition of "Waters of the United States," <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>.

<sup>6</sup> See *Rapanos v. U.S.*, 547 U.S. 715 (2006); see also *Solid Waste Agency of N. Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).

<sup>7</sup> 159 CONG. REC. S8417-18 (daily ed. Nov. 21, 2013) (Appealing Ruling of the Chair).