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January 12, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

The Honorable John M. McHugh
Secretary
U.S. Department of the Army
The Pentagon, Room 3E700
Washington, DC 20310

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave, SW
Washington, DC 20250

Dear Administrator McCarthy, Secretary McHugh, and Secretary Vilsack:

I write to relay suggestions from Colorado's water community regarding the Administration's proposed rule to clarify the Clean Water Act. As you know, we must have a clear understanding of where the Act applies in order to protect the nation's water. The rulemaking has the potential to provide greater certainty while making important improvements to water quality and aquatic wildlife habitat.

Coloradans value clean water and understand its importance to our economy, environment and well-being. The Colorado River, with its headwaters in Rocky Mountain National Park, serves 30 million people across the West. Many farmers, ranchers, business people, government leaders, hunters, anglers, and other constituents from across Colorado have voiced their support for the Clean Water Act and the need for the additional clarity that a revised rule could provide.

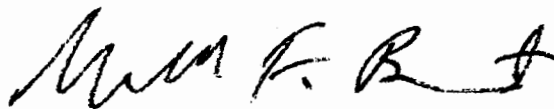
As a member of the U.S. Senate Committee on Agriculture, Nutrition, and Forestry, I appreciate your thoughtful responses last fall to the Committee's letter relaying concerns raised by agricultural producers. It is encouraging to hear that the Administration will clarify the definitions of key terms in the final rule.

Below are additional suggestions that I have heard from both the public and private sector in Colorado. It is my hope that the Administration will consider these commonly expressed concerns in its final rulemaking:

1. Ditches are critical to meeting agriculture and municipal water needs across the West. Because most of these ditches begin or end in a waterbody, they are not excavated wholly in uplands. My office has received reassurance that the current agricultural exemptions will be retained and perennial ditches will likely not become jurisdictional. Similar clarity is needed for our municipal water providers.
2. Forest fires and floods are becoming increasingly common across the West. Local governments must respond quickly during and after these events to manage storm water and restore infrastructure to maintain public health and safety. These response actions serve to protect and enhance waterways, though they sometimes have proceeded in a fashion that has resulted in adverse effects on fish and wildlife habitat. I encourage the Administration to evaluate the possibility of extending limited exemptions for stormwater and debris management in the case of natural disasters, while maintaining needed safeguards for habitat.
3. Dry drainages such as arroyos and washes are common across the arid West. Water only flows through these features after large, infrequent rainfall events. The proposed rule would classify ephemeral drainages as jurisdictional, which could place significant regulatory burdens on infrastructure projects without associated water quality benefits. I urge the Administration to consider the unique characteristics of the arid West in its final rule and consider the merits of a case-by-case jurisdictional determination of ephemeral features.
4. Several municipalities have raised concerns that parts of their drinking water treatment systems or water recharge and reuse facilities could become jurisdictional under the proposed rule. These facilities include lined reservoirs that are potentially adjacent to waters of the U.S. The jurisdictional status of these water treatment facilities should be clarified in the final rule.

Thank you for your consideration of these sentiments from Colorado and for your efforts to protect water quality across the country.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael F. Bennet", with a stylized flourish at the end.

Michael F. Bennet
U.S. Senator



MAY 26 2015



**The Honorable Michael F. Bennet
United States Senate
Washington, D.C. 20510**

Dear Senator Bennet:

Thank you for your January 12, 2015, letter on the U.S. Environmental Protection Agency's and the U.S. Department of the Army's proposed rulemaking to define the scope of the Clean Water Act, consistent with science and the decisions of the Supreme Court. The agencies' rulemaking process is among the most important actions we have underway to ensure reliable sources of clean water on which Americans depend for public health, a growing economy, jobs, and a healthy environment.

We appreciate your relaying suggestions from Colorado's water community and sharing your concern regarding the importance of working effectively with the public, and particularly stakeholders in the West, as the rulemaking process moves forward.

During the public comment period, the agencies met with stakeholders across the country to facilitate their input on the proposed rule. We talked with a broad range of interested groups including farmers, businesses, states and local governments, water users, energy companies, coal and mineral mining groups, and conservation interests. In October 2014, the EPA conducted a second small business roundtable to facilitate input from the small business community, which featured more than 20 participants that included small government jurisdictions as well as construction and development, agricultural, and mining interests. Since releasing the proposal in March, the EPA and the Corps conducted unprecedented outreach to a wide range of stakeholders, holding nearly 400 meetings all across the country to offer information, listen to concerns, and answer questions. The agencies completed a review by the Science Advisory Board on the scientific basis of the proposed rule and will ensure the final rule effectively reflects its technical recommendations. These actions represent the agencies' commitment to provide a transparent and effective opportunity for all interested Americans to participate in the rulemaking process.

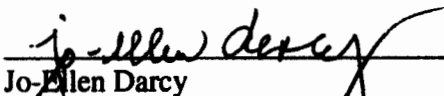
It is important to emphasize that the proposed rule would reduce the scope of waters protected under the Clean Water Act compared to waters covered during the 1970s, 80s, and 90s to conform to decisions of the Supreme Court. The rule would limit Clean Water Act jurisdiction only to those types of waters that have a significant effect on downstream traditional navigable waters - not just any hydrologic connection. It would improve efficiency, clarity, and predictability for all landowners, including the nation's farmers, as well as permit applicants, while maintaining all current exemptions and protecting public health, water quality, and the environment. It uses the law and sound, peer-reviewed science as its cornerstones.

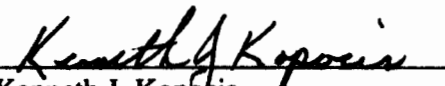
Your letter expresses specific concerns regarding the impact of the agencies' proposed rule on Colorado and on the Western U.S., with special focus on exemptions for certain ditches and for ditch maintenance, managing stormwater, ephemeral waters that are common in the West, and on both drinking water treatment systems and water recharge. A key goal in developing the rule is to provide increased clarity and predictability for identifying waters that are, and are not, covered by the CWA. We believe the final rule accomplishes this important objective in a manner that is consistent with the CWA and decisions of the Supreme Court. The final rule will be responsive and address many of the issues you raise in your letter in ways that ensure protection of waters we all can agree need protection, but also in ways that recognize limitations greater than those that existed under the CWA in the 70s, 80s, and 90s.

America thrives on clean water. Clean water is vital for the success of the nation's businesses, agriculture, energy development, and the health of our communities. We are eager to define the scope of the Clean Water Act so that it achieves the goals of protecting clean water and public health, and promoting jobs and the economy, in a way that works for Coloradans as well as all Americans.

Thank you again for your letter. We look forward to working with Congress as our Clean Water Act rulemaking effort moves forward. Please contact us if you have additional questions on this issue, or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at borum.denis@epa.gov or (202) 564-4836, 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.

Sincerely,


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


Kenneth J. Kopocis
Deputy Assistant Administrator for Water
U.S. Environmental Protection Agency