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Senator Click Bishop

Comments on EPA/Corps of Engineers

Proposed Rule Defining "Waters of the United States"

April 8, 2015

Thank you, Mr. Chairman – and Welcome Home!

I am Click Bishop, currently an Alaska State Senator, representing West Fairbanks and a broad sweep of rural Alaska, including 63 small villages situated in the Yukon, Tanana and Copper River valleys.

As a former commissioner of labor and workforce development, I am intimately familiar with the impacts of government decisions on our economy – and on working families – through delay or outright denial of resource development projects.

My previous career was as a heavy equipment operator, working on the Trans Alaska Pipeline construction, and other heavy construction projects throughout Alaska. I currently operate a placer mine in the vicinity of Manley Hot Springs.

In my younger adult life, I spent quite a few enjoyable hours racing high speed outboard-powered boats on Interior rivers.

So, it is safe to say that everything I have been involved with since I got out of high school, and quite a bit of what I did before, has taken place on or near "waters of the United States," especially under these new definitions.

In speaking to you today, it is not my intention to regurgitate a long list of facts and counterarguments showing how and where the federal agencies have overstepped their boundaries in this action. Those have been entered into the record hundreds of times after the proposed rule was published in the Federal Record a year ago.

Instead, I want to sound a warning that there will be huge negative impacts on the nation's and Alaska's economy if the EPA and the Corps adopt these definitional changes, which it appears they are proceeding to do.

I fear the impacts of the EPA's new, enhanced and onerous powers generated by these proposed changes – impacts on small, family-owned and operated businesses, as well as large projects proposed in Alaska.

It's interesting to note that whenever a government agency like the EPA or the Corps of Engineers seeks to "clarify" the meaning or definition of a term or phrase, it very seldom narrows its definition, but rather broadens it to areas never envisioned by those who passed the Clean Water Act in 1972. Wouldn't it be more honest to look at a program's enabling legislation and keep any "clarifications" as true to the original intent of Congress as possible?

As so often happens, we also see that words the Agencies are proposing to use to clarify and better define their regulations only further muddy the water, so to speak. How will they determine what is a "significant" connection to downstream water quality? What is a "significant nexus?"

I note, also, that the Agencies are in a headlong rush to impose this rule, ignoring the public process and, in the case of their Connectivity Report, getting the decision done before the so-called science, upon which the decision is supposed to be made, is available. While stakeholders - from state agencies to local governments - expressed their concern about this "cart-before-the-horse" process, the EPA and Corps moved forward regardless.

The Agencies have moved forward their proposed changes without consultation with state and local agencies that will be required to implement and enforce the changes. In addition, they have moved forward with no regard or meaningful analysis of the fiscal impact to state and local agencies.

It is clear to me that the EPA, in lock-step with the Corps of Engineers, view it as their mission to control every human activity within the water column, from the moment the raindrop hits the earth until it diffuses into the ocean.

We in Alaska take great pride in our state's superlatives, which set us apart from our sister states. Little things like our millions of acres of wetlands... millions of lakes... 30,000 miles of shoreline... it's cold and dark here in the winter... there's midnight sun in the summer...

I see no evidence that the Agencies will accommodate our unique features, such as permafrost, a pervasive feature found in 63 percent of the state, yet unacknowledged in the proposed new regulatory scheme. Permafrost is an inhibitor of water flow – it is a "sink" for the storage of water. It should be specifically excluded from these regulations. Again, we are not sure how the Agencies will determine what is a "significant nexus," but there is simply no nexus between cryogenically isolated permafrost and "waters of the United States."

Unique as we may be in Alaska, in regard to this new definition of "waters of the United States," we are truly in the same boat as all our sister states and territories. With this

definition change, we will see projects shut down in Anchorage, Alaska, as well as Sheridan, Wyoming... Seattle, Washington... Topeka, Kansas... etc.

It is my understanding that the EPA and the Corps will adopt these changes by the end of this month, and in substantially the same form as they have been presented to the public. In other words, the thousands of comments and reams of paper submitted to the federal agencies by concerned citizens who will be negatively impacted have been, apparently, window dressing.

This attempted rule-making by the EPA and Corps of Engineers is beyond "clarification;" it is, rather, a flagrant assault on the intent and plain language of the Clean Water Act, a law that was passed by your predecessors in Congress. It represents a power grab by those two Agencies, at a high cost to the freedoms of the people of the U.S.

The US Senate has the power to stop implementation of these onerous definition changes. I strongly encourage you and your colleagues to do so.

Sincerely,



Senator Click Bishop