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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, *MAJORITY STAFF DIRECTOR*
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July 16, 2015

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army for Civil Works
U.S. Army Corps of Engineers
The Pentagon, Room 2E569
Army Navy Drive & Fern Street
Arlington, VA 20310-0108

Dear Secretary Darcy,

On June 29, 2015, you and the Administrator of the Environmental Protection Agency published a revision to the regulatory definition of the term “waters of the United States” under the Federal Water Pollution Control Act. 33 U.S.C. 1251 et seq. 80 Fed. Reg. 37054 (Final Rule). In hearings and in letters sent to you and to the Administrator of the Environmental Protection Agency, I and other members of the Senate Committee on Environment and Public Works have repeatedly expressed concerns about the scope of and legal justification for this rule as well as the process employed during its development.

It is my understanding that during a June 10, 2015 hearing held by the House Committee on Transportation and Infrastructure Subcommittee on Water Resources and Environment, Chairman Bob Gibbs requested a copy of an April 27, 2015 memorandum sent from Major General John Peabody, Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers, to you (Peabody Memorandum), conveying the serious concerns of the Corps of Engineers with the Final Rule. It is further my understanding that you have since provided the requested document and attachments to the House Committee on Transportation and Infrastructure. Pursuant to our congressional oversight responsibilities as the Senate committee with jurisdiction over the Federal Water Pollution Control Act, please transmit to me immediately a clean, unmarked, and clearly legible copy of the Peabody Memorandum along with any attachments to such memorandum.

Additionally, the Committee recently learned of a second memorandum and analysis prepared by Paul Scodari, Senior Economist, U.S. Army Corps of Engineers, Institute for Water Resources (Scodari Analysis), expressing concerns with the U.S. Environmental Protection Agency’s economic analysis of the Final Rule. It is my understanding that these documents also were requested by Chairman Gibbs and that you have provided them to him. Accordingly, pursuant to our congressional oversight responsibilities as the Senate committee with jurisdiction over the Federal Water Pollution Control Act please transmit to me immediately a clean, unmarked, and clearly legible copy of the Scodari Analysis along with any attachments to such memorandum.

The Honorable Jo-Ellen Darcy
July 16, 2015
Page 2 of 2

Given that these documents have already been provided to the House Committee on Transportation and Infrastructure, there should be no delay in providing them to the Senate Committee on Environment and Public Works.

Separately, and on a different timetable, I also request that you provide to the Committee all communications or documents, electronic or otherwise, sent to you or your office by employees of the Corps of Engineers or the Office of the Army General Counsel between the close of the public comment period on November 14, 2014 and the release of the Final Rule on May 27, 2015, containing comments or concerns regarding the revisions to the regulatory definition of "waters of the United States." Please provide these documents no later than August 14, 2015.

Finally, the Committee may be asking for additional copies of documents, records, or communications you or your office may have related to the development of the Final Rule. Please secure all such materials, including emails, letters, memoranda, analyses, reports, other written materials, and all other communications related to this rulemaking.

Thank you for your prompt attention to this matter. If you have any questions, please contact the Senate Committee on Environment and Public Works Majority Office at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman