



washington dc update

February 9, 2015

House/Senate WOTUS Hearing Update

This past Wednesday, February 4, the House Transportation and Infrastructure Committee and the Senate Committee on Environment and Public Works held a joint hearing on the pending Waters of the US Final rule. Joint House/Senate Committee hearings are rare and the fact that WOTUS occasioned such an event is an indication of the controversy surrounding this issue.

We have attached the testimony of EPA Administrator Gina McCarthy and of Assistant Secretary of the Army Jo-Ellen Darcy on behalf of the Corps of Engineers. We have also attached the statement released by Chairmen Shuster and Inhofe after the completion of the hearing.

The general consensus among Members and staff that we have spoken to is that Administrator McCarthy gave a well prepared and spirited defense of the WOTUS Rule while Members of Congress expressed their continued concern over the fact that the shortcomings of the rule could not possibly be addressed in the time-line laid out by the Administration which proposes to make the rule final later this spring.

Because the Administration is so determined to finalize the WOTUS Rule and because Republicans, and some Democrats are so strongly opposed to this step, the coming weeks promise to be contentious. WOTUS and the WESTCAS strategy during this period will be one of the top items on our agenda during the upcoming WESTCAS Federal Issues Workshop in Phoenix on February 19-20.

Here are some brief excerpts from the joint Shuster/Inhofe statement after last week's hearing and also from EPA Administrator McCarthy's testimony:

Shuster, Inhofe Call for Withdrawal of WOTUS Rule

".....U.S Environmental Protection Agency Administrator Gina McCarthy admitted the rule is flawed by repeatedly committing to fix the proposal when Members of Congress raised serious concerns about how it would impact their constituents, communities, and local industries. She admitted that the proposed rule is inconsistent and ambiguous. In response to questions, she committed to make changes to endure that isolated ponds, storm sewer systems, water reuse systems, roadside ditches, rock quarries, and farm activities all will be exempt. McCarthy also pledged to review each of the more than one million comments recently submitted to the proposed rule. Undermining all of her previous commitments, however, McCarthy also said any change to the rule would not be significant enough to warrant re-proposal and pledged today to plow ahead to issue a final rule by spring. The EPA cannot have it both ways. If the rule is flawed it should be withdrawn. Small changes will not be sufficient.

We will continue to conduct oversight over the EPA and work together towards legislation to prevent this flawed rule from being finalized."



Excerpts from the Testimony of USEPA Administrator Gina McCarthy

“60% of the stream miles in the US flow seasonably or after rain but are critically important to the health of downstream waters.”

“Approximately 117 million people-one in three Americans- get their drinking water from public systems that rely on seasonable rain dependent and headwater streams.”

“Neither the plurality nor the covering opinion in Rapanos invalidated any of the agency’s existing regulations defining waters of the United States, but these opinions did raise questions concerning how to determine which waters were jurisdictional pursuant to their regulations.”

“Moreover, the agencies also propose to clarify for the first time, by rule, that certain features and types of waters are not considered “waters of the United States.” These include features such as certain intermittent and ephemeral ditches; artificially irrigated areas that would revert to uplands if irrigation were to cease; artificial lakes and ponds used for purposes such as stock watering; irrigation settling basins; or rice growing; and groundwater; including groundwater drained through subsurface drainage systems.”

“We concluded that the propose rule would provide an estimate \$388 million to \$514 million annually of benefits to the public, including reducing flooding, filtering pollution, providing wildlife habitat, supporting hunting and fishing, and recharging groundwater. The public benefits significantly outweigh the costs of about \$162 million to \$278 million per year for mitigating impacts to streams and wetlands and taking steps to reduce pollution to waterways.”

“I want to emphasize that farmers, ranchers, and foresters who are conducting the activities covered by the exemptions (activities such as plowing, tilling, planting, harvesting, building and maintaining roads, ponds and ditches, and many other activities in waters on their lands), can continue these practices after the new rule without the need for approval from the Federal government. Additionally, we expect to clarify for the first time in regulation that groundwater, including groundwater in subsurface tile drains, is not subject to the CWA. The propose rule reduces jurisdiction over ditches, and maintains the existing exclusions for prior converted cropland and waste treatment systems, including treatment ponds and lagoons.”

