



washington dc update

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Congressional Members Weigh-in on EPA's CWA Rulemaking

As we discussed at the Legislative Workshop in Tucson, Congress is inserting itself into the EPA Clean Water Act Rulemaking process. Last week, several top Republican Members led by Senator David Vitter (R-LA) weighed in with a joint letter asking the EPA to halt the CWA Rulemaking. Vitter is the Ranking Member on the Senate Environment and Public Works Committee and was joined by Rep. Bob Goodlatte (R-Va.), Chairman of the House Committee on the Judiciary, and Rep. Spencer Bachus (R-Ala.), Chairman of the House Subcommittee on Regulatory Reform, Commercial and Antitrust Law, in sending a letter to Office of Management and Budget (OMB) requesting they return the draft rule to EPA.

A Rule has been sent to OMB, while the scientific report that would support it was made available for public review. The Members recognized that the Rule was submitted before the science was complete.

The Members' letter stated, "EPA has committed to predicating the final rule on the *Connectivity Report*, even though critical review of the *Report's* draft version is far from complete," and made the strong conclusion that "...EPA's decision to base the final "waters of the United States" rule on a report that is still only in draft form creates the appearance that peer review and public input for the *Connectivity Report* are nothing more than paper exercises."

WESTCAS joined several other water associations in commenting on the CWA Rulemaking, which highlighted concerns with not fully venting the scientific report before the rule is submitted.

In a carefully reasoned approach, the Members' letter questioned the legitimacy of the *Connectivity Report* for several reasons:

- the report is still in draft form and only recently available for public review and input;
- several parties have "highlighted significant flaws" in the report, including the "failure to distinguish between significant and insignificant connections";
- the Science Advisory Board (SAB) peer review is still in its early stages; and,
- EPA has decided on the final rule and no criticism will result in significant changes to rule.

The Members requested that OMB not allow such "inflexibility" on EPA's part. Rather, EPA should allow the SAB peer review to be completed and then decide whether the report should be the basis for the rule.

A copy of the [Members' letter](#) is available on the EPW site. We will continue to follow the actions of Congress as Members interject into the CWA Rulemaking and keep you posted.

Summary & Take-Away .

Congress and CWA Rulemaking

Last week, in a joint letter to OMB several top-ranking Republican members requested that the draft CWA Rule submitted on September 17th be returned to EPA and that no further action be taken until the Science Advisory Board completes a peer review process. After that process is completed, then EPA should decide whether the SAB report justifies submitting the rule.

At our Legislative Workshop this past October in Tucson, we discussed that Congress would involve itself in the CWA Rulemaking—and this is the latest example.

We would expect additional comments and actions by Congress, particularly on the appropriations side. We will keep you posted.

