



washington dc update

ALERT
April 12, 2011

Urgent Developments Requiring Your Attention

The issue of EPA/Corps of Engineers Clean Water Protection Guidance is not new. But it has recently entered into a new and dramatic phase that requires your urgent attention and involvement as a WESTCAS member. The WESTCAS Legislative Committee will support your efforts through draft letters and contact information.

These efforts are essential because it appears that the Administration may be close to issuing this guidance.

We are working closely with a number of water resources associations and coordinating our efforts with them. But this issue is also a great opportunity for WESTCAS to shine as the voice of Arid West. In the coming days, we will be asking WESTCAS to sign onto a number of letters that are anticipated from the Congress. But even more importantly, we will be drafting letters just from our organization that will articulate the unique perspective of our membership. Last, and most critical, we are going to ask you, as a WESTCAS member, to add your individual voices to this process by working directly with your Representatives and Senators.

Clean Water Protection Guidance

One of the priorities of the Administration during its first two years of office was to have the Congress pass legislation extending Federal jurisdiction over what constitutes “waters of the US.” Despite having a large majority in the House and 59 votes in the Senate, this legislation never made it out of Committee in either House.

As a result, the USEPA and the Corps of Engineers have drafted “Clean Water Protection Guidance” and submitted it to OMB for final clearance. This draft, which has not been made available for public comment, lays out how EPA/Corps will identify waters subject to the Clean Water Act protection. This will significantly increase the scope of the Clean Water Act’s jurisdiction over water resources. It will also overturn, by Executive Order, the US Supreme Court’s SWANCC and Rapanos decisions.

Summary & Take-Away .

Action Needed on CWA Guidance

Without public comment, the USEPA and the Corps of Engineers have drafted “Clean Water Protection Guidance” and submitted it to OMB for final clearance. This Guidance will substantially increase scope of CWA jurisdiction. A “Dear Colleague” letter expressing: *The Agencies cannot, through guidance, change the scope and meaning of the Clean Water Act or the statute’s implementing regulations.*

Take-Away

WESTCAS members have opportunity to request individual Congressional Members to sign-on to this important letter developed by Representative Bob Gibbs (see attachment).



Some have suggested that if there is anything that would allow the Supreme Court to render a 9 to 0 verdict it is an action by the Executive Branch of government overturning one of its decisions.

“What can you do as a WESTCAS member?”

In the immediate sense, Representative Bob Gibbs of Ohio, who chairs the Transportation and Infrastructure Subcommittee in the House, joined by Chairman Mica of the Committee and by Pennsylvania Democrat Tim Holden, is circulating a “Dear Colleague” letter with a deadline for Members to sign on of Close of Business tomorrow. The water resources community did not become aware of this letter until yesterday and we are all scrambling to help mobilize support through our associations.

We have attached the letter and contact information for you to send to your Member of Congress asking them to sign on as well. Keep in mind; this is just the first of what will be several opportunities to get involved with this issue. Please feel free to email either of us if you need contact information for your Congressional delegation.

Here is a key part of the letter:

“The Agencies [EPA/Corps] cannot, through guidance, change the scope and meaning of the Clean Water Act or the statute’s implementing regulations. If the Administration seeks statutory changes to the Clean Water Act, a proposal must be submitted to Congress for legislation action. If the Administration seeks to make regulatory changes, a notice and comment rulemaking is required.”

If you agree with this sentiment, then please follow the instructions on how to request your individual Member of Congress to sign onto the letter. And please be alert for additional reports on this subject because the activities of the water resources community can be expected to intensify.

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