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Regional Council of Rural Counties
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April 16, 2012

The Honorable John Barrasso
U. S. Senate
307 Dirksen Senate Office Building
Washington, D.C. 20510

RE: S. 2245 -- Preserve the Waters of the U.S. Act

Dear Senator Barrasso:

On behalf of California's counties that are represented by the Regional Council of Rural Counties (RCRC) and the California State Association of Counties (CSAC), we are writing to thank you for your sponsorship of the "Preserve the Waters of the U.S. Act," (S. 2245). S. 2245 was introduced in response to the imminent release of the "Waters of the U.S." Guidance developed by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps), which could have vast legal and financial implications for California's local governments.

Together, CSAC and RCRC represent all 58 counties in California before the State Legislature, administrative agencies and the federal government. Our County Boards of Supervisors and County Public Works Departments are vital partners in the stewardship of our state's water resources. They take this role very seriously and are committed to carrying out provisions of the Clean Water Act (CWA) to aid in better protection of our water systems.

We understand that the intent of EPA and the Corps in promulgating the Guidance was to provide clarity to agency field staff in making jurisdictional determinations under the CWA. While there may be a need to provide some level of clarification, our organizations have significant concerns with the approach taken by EPA and the Corps in providing this direction via a Guidance document, as opposed to an official rulemaking or statutory change.

Despite the EPA and Corps' assertions that the draft Guidance is not binding and lacks the force of law, we fear that it will be used in enforcement actions, permitting decisions and jurisdictional determinations which will give it the effect of law. The proposal clearly goes beyond clarifying the scope of "waters of the United States." The Guidance also introduces new definitions and regulatory requirements which should only be considered within the

context of a formal rulemaking process, subject to consultation with other federal agencies and state and local governments.

As you are aware, there are a number of CWA programs that directly impact counties including the National Pollution Discharge Elimination System (NPDES) program, Pesticides General Permit Program, and Total Maximum Daily Load/Water Quality Standards. Our members are concerned that the proposed Guidance will cause considerable cost increases for local governments by creating even more confusion about the scope of the CWA and what permits would be required for responsible water oversight and management.

Additionally, we are concerned that the Guidance may be used by the Corps regional staff to expand the scope of the 404 permit process. Counties must obtain 404 permits for nearly all public works improvements and we have long supported streamlining of the existing process to help improve project delivery and save taxpayer money. Any expansion of the current system could further hamper our ability to complete upgrades and repairs critical for public safety, environmental protection, and economic growth.

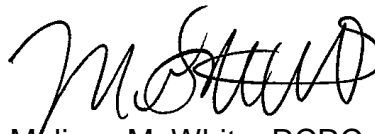
California's counties strongly urged the U.S. EPA and Corps to proceed with a formal rulemaking on the "Waters of the U.S." proposal in our comments on the Guidance. We believe the rulemaking process is transparent, requires direct consultation with affected governments and any final action would have the force of law. Due to the controversial nature of many of the components of the Guidance, a rulemaking process is the most appropriate way to ensure that all concerns from the regulated community are fully vetted and considered before any final actions are taken.

Thank you again for sponsoring S. 2245. We look forward to working with you to ensure its timely passage. Should you have any questions regarding our position or would like additional information, please contact Melissa White, RCRC Federal Affairs Coordinator at (916)447-4806, or Karen Keene, CSAC Director of Federal Affairs at (916)327-7500 ext. 511.

Sincerely,



Karen A. Keene, CSAC
Director of Federal Affairs



Melissa M. White, RCRC
Federal Affairs Coordinator

cc: The Honorable Barbara Boxer, Chairman, Committee on Environment and Public Works
The Honorable James Inhofe, Ranking Member, Committee on Environment and Public Works
The Honorable Dianne Feinstein