



California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814



Regional Council of Rural Counties
1215 K Street, Suite 1650
Sacramento, CA 95814

November 14, 2011

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feinstein:

On behalf of the California State Association of Counties (CSAC) and the Regional Council of Rural Counties (RCRC), we are writing to urge your support for an amendment to the fiscal year 2012 Energy and Water Development Appropriations bill (HR 2354). The amendment, sponsored by Senators John Barrasso (R-WY) and Dean Heller (R-NV), would bar the U.S. Army Corps of Engineers (the Corps) from implementing the "Guidance Regarding Identification of Waters Protected by the Clean Water Act" (the Guidance) originally published in the *Federal Register* on May 2, 2011.

As we have conveyed in official comments to the Corps and Environmental Protection Agency (EPA), CSAC and RCRC have significant concerns with the Guidance document. Our overarching concern is that it would dramatically expand the scope of the Clean Water Act (CWA) to give EPA and the Corps additional regulatory powers over virtually all waters within the United States, even those waters now considered entirely under state jurisdiction. By suggesting that a "significant nexus" standard should be applied to all interstate waters, suggestively without the need to have surface connectivity to a navigable water, we believe that the process of obtaining CWA permits under the Corps Guidance would become more cumbersome and prohibitively expensive. These potential actions and other proposed changes would fundamentally erode the ability of local communities and state governments to manage their own water resources.

In addition, the EPA and the Corps do not have the authority to change the scope and meaning of the CWA through the rulemaking process, much less through a guidance document. Such a sweeping change in law requires an open and thorough debate, followed by congressional approval. In its current form, the Guidance document appears to lack sufficient support in Congress, and should be rejected.

The Barrasso-Heller amendment would not only prevent the Corps from finalizing the Guidance, but it would also stop the Corps from initiating a rulemaking process that would more broadly define "waters of the United States." Should you have any questions regarding our position or would like additional information, please contact Joe Krahn, CSAC Federal Representative, Waterman and Associates at (202) 898-1444 or Melissa White, RCRC Federal Affairs Coordinator at (916) 447-4806.

Sincerely,

A handwritten signature in blue ink that reads "Karen A. Keene".

Karen Keene, CSAC
Deputy Director, Federal Affairs

A handwritten signature in blue ink that reads "Melissa M. White".

Melissa M. White, RCRC
Federal Affairs Coordinator