

From: pearl hewett [REDACTED]
Sent: Friday, July 06, 2012 9:33 AM
To: Wessel, Ann (ECY); [REDACTED]
Cc: [REDACTED]
Subject: "It's time to get EPA - DOE Dungeness Water Rule and SMP out of Americans' backyards,"

EPA power grab to regulate ditches, gullies on private property

"It's time to get EPA lawyers (and the DOE Dungeness Water Rule and SMP) out of Americans' backyards,"

[EPA power grab unleashes bipartisan backlash](#)

[By: Audrey Hudson](#)
[Human Events](#)

6/11/2012 08:05 A

Lawmakers are working to block an unprecedented power grab by the Environmental Protection Agency to use the Clean Water Act (CWA) and control land alongside ditches, gullies and other ephemeral spots by claiming the sources are part of navigable waterways.

These temporary water sources are often created by rain or snowmelt, and would make it harder for private property owners to build in their own backyards, grow crops, raise livestock and conduct other activities on their own land, lawmakers say.

"Never in the history of the CWA has federal regulation defined ditches and other upland features as 'waters of the United States,'" said Rep. John Mica (R-Fla.), chairman of the House Transportation and Infrastructure Committee, Rep. Nick Rahall (D-W.Va.), the ranking committee member, and Rep. Bob Gibbs (R-Ohio), chairman of the Subcommittee on Water Resources and Environment.

"This is without a doubt an expansion of federal jurisdiction," the lawmakers said in a May 31 letter to House colleagues.

The unusual alliance of the powerful House Republicans and Democrat to jointly sponsor legislation to overturn the new guidelines signals a willingness on Capitol Hill to rein in the formidable agency.

"The Obama administration is doing everything in its power to increase costs and regulatory burdens for American businesses, farmers and individual property owners," Mica said in a statement to Human Events. "This federal jurisdiction grab has been opposed by Congress for years, and now the administration and its agencies are ignoring law and rulemaking procedures in order to tighten their regulatory grip over every water body in the country."

"But this administration needs to realize it is not above the law," Mica said.

The House measure carries 64 Republican and Democratic cosponsors and was passed in committee last week. A companion piece of legislation is already gathering steam in the Senate and is cosponsored by 26 Republicans.

“President Obama’s EPA continues to act as if it is above the law. It is using this overreaching guidance to pre-empt state and local governments, farmers and ranchers, small business owners and homeowners from making local land and water use decisions,” Sen. John Barrasso (R-Wyo.) said in announcing their measure in March. “Our bill will stop this unprecedented Washington power grab and restore Americans’ property rights.”

“It’s time to get EPA lawyers out of Americans’ backyards,” Barrasso said.

Republicans say the proposal is peppered with loopholes. It suggests that roadside and agricultural ditches will be excluded; however, it also notes several exceptions, such as a connection to navigable or interstate waterways, ditches “that have relatively permanent flowing or standing water,” or a “bed, bank and ordinary high water mark.”

The EPA and Army Corps of Engineers drafted the new guidelines to implement Supreme Court decisions in the *Solid Waste Agency of Northern Cook County* case in 2001 and the *Rapanos* case in 2006 after the decisions removed some waters from federal protection and caused confusion about what remained protected.

However, the lawmakers say the jurisdictional limits set by the court are being ignored in order to justify the expansion of the agencies’ control.

The new language is intended to protect smaller waters that could potentially feed pollution downstream to larger bodies of water, but because it is not a formal rule, it cannot be enforced in the courts.

“Although guidance does not have the force of law, it is frequently used by federal agencies to explain and clarify their understandings of existing requirements,” the new guidelines say.