

**JASON SMITH**  
8TH DISTRICT, MISSOURI

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2508**

July 3, 2014

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Sarah Parker Pauley  
Director  
Department of Natural Resources  
P.O. Box 176  
Jefferson City, MO 65102

Dear Director Parker Pauley,

I write to you today to express my concerns regarding the interaction between the EPA's recently proposed "Waters of the United States" rule and the Missouri DNR's "Nonpoint Source Management Plan." My opposition to the new EPA rule has been up-front and public; I think the rule is misguided, poorly drafted, and a blatant attempt to extend authority of the EPA into areas where it has not been previously. Any regulations created by the State of Missouri pursuant to the Clean Water Act should be crafted as if this regulation were not pending, to protect Missouri's citizens from the EPA's attempts to erode private property rights. The State of Missouri should follow its own process, to the maximum extent possible; to protect the private property rights of its citizens from this federal agency's overreach.

The United States House of Representatives sent a letter signed by 231 of its members, including myself<sup>1</sup>, in May asking that the EPA withdraw the "Waters of the United States" rule. Pitched as a "clarification" to the currently nebulous definition of "Navigable Waters" in the Clean Water Act – the proposed rule is anything but. Its sweeping expansion of the definition of "Navigable Waters" to include all "Waters of the United States" seems to give EPA regulatory authority over any collection of water that has the possibility of being connected to "Navigable Waters." This has the potential to include every pond, gully, dry creek bed, irrigation ditch, puddle, or other similar collection of water.

While the EPA says that many activities that are not currently regulated will be exempt under the new regulations, these exemptions are not well-defined, leaving many to believe that they may not be exemptions at all. For example, according to testimony provided by the National Water Resources Association in front of the Natural Resources Sub-committee on Water and Power:

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<sup>1</sup> A copy of the letter is enclosed

*Artificially irrigated areas that would revert to upland should water application cease are exempt, but there is no definite clarification as to what qualifies as an "upland." The proposed rule also properly excludes "groundwater" from its definition of "waters of the United States," but it does not reconcile that exclusion with its inclusion of certain waters based on a "subsurface" (groundwater) connection. Other exclusions that are not clearly defined include: gullies, rills, non-wetland swales; and certain types of upland ditches, or those ditches that do not contribute flow to a "water of the U.S." Again, key terms like "uplands" and "contribute flow" are undefined. For the people I represent, it is imperative that the rule define how currently exempt ditches will be distinguished from jurisdictional ditches. The proposed rule needs greater clarity, ensuring that the historic exemptions for irrigation ditches and associated infrastructure are retained<sup>2</sup>.*

As you all are well aware, Southeast Missouri used to be a swamp, and currently contains thousands of miles of drainage ditches. The potential expansion of regulatory jurisdiction to include every accumulation of water in my district, and in the state, would be a massive increase in our citizen's regulatory burden.

When the federal agencies responsible for implementing these proposed EPA rules were invited to testify in front of myself and the Natural Resources committee in Washington, they declined the invitation.<sup>3</sup> If these agencies cannot even take the time to explain these regulations, they should be withdrawn, and the Missouri Department of Natural Resources should not be bound to follow them, or implement them through its "Nonpoint Source Management Plan."

Many of my constituents have reached out to me; concerned that the DNR's recent "Nonpoint Source Management Plan" is a derivative of the EPA's efforts to expand their authority under the "Waters of the United States" rule. When similar efforts were undertaken by the federal government with the "White River Watershed" and the "National Blueways System" the people of this state soundly rejected them. Congress listened, hosting a field hearing in West Plains to discuss the disastrous consequences of expanding federal regulatory jurisdiction, and we were able to pressure the Department of the Interior into withdrawing the "White River Watershed National Blueway" designation. I would ask you to withdraw any aspects of the "Nonpoint Source Management Plan" that are designed to help implement federal attempts to increase jurisdictional waters.

I also write today in the hope that the Missouri Department of Natural Resources is not simply issuing this "Nonpoint Source Management Plan" as a proxy of the EPA. The Missouri Department of Natural Resources is much better situated to deal with Missouri waters than the Environmental Protection Agency – I urge your agency to reject the EPA's proposed "Waters of the United States" rule and instead focus on protecting the private property rights of Missourians. Additionally, I would welcome information from the Department of Natural Resources explaining your efforts to protect private property rights while developing this "Nonpoint Source Management Plan," and also clarifying the plan's relationship to the EPA's proposed "Waters of the United States" rule.

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<sup>2</sup> Accessed online at : [http://naturalresources.house.gov/uploadedfiles/testimony\\_martinwp6.24.14.pdf](http://naturalresources.house.gov/uploadedfiles/testimony_martinwp6.24.14.pdf)

<sup>3</sup> Hearing available online at: <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=384481>

Thank you for considering my requests,

A handwritten signature in blue ink, appearing to read "J. Smith". The signature is stylized with a large initial "J" and a long, sweeping underline that extends to the left.

Jason Smith  
MEMBER OF CONGRESS