



Western Land Commissioners Concerned about the Clean Water Act

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Bismarck, ND--Land commissioners from 23 western states gathered in Bismarck, North Dakota during July to discuss and debate policy issues affecting land management actions on over 440 million acres of state land and water throughout the western United States. The issue attracting the most attention was the federal Clean Water Act (“CWA”), and the Environmental Protection Agency’s (“EPA”) proposed rule change affecting Waters of the United States (“WOTUS”).

According to the EPA, the proposed rule merely clarifies the existing jurisdictional reach of the U.S. Army Corps of Engineers (the “Corps”) over WOTUS, having little impact to existing regulations or the economy. Western land commissioners see it differently. In a resolution approved by the Association at its business meeting, the commissioners note that despite assurances to the contrary from the EPA, the proposed rule appears to greatly expand the jurisdiction of the Corp over WOTUS.

A major concern among the commissioners is that the EPA is moving forward on adoption of the proposed rule without making available a draft economic report, which the EPA claims supports the proposed rule. According to WSLCA President, John Thurston, “the draft economic report has not been released to the public, nor has it been subject to a mandatory peer review by the Science Advisory Board.” While EPA has extended the public review and comment period until October 20, 2014, there will not be adequate time to complete a thoughtful, in-depth peer review and analysis to facilitate the development of meaningful comments.

On the surface it would appear that changes to the CWA, administered by the Corps, would mostly affect states having large amounts of surface waters and wetlands. However, the economies of states

like Arizona could be devastated if the new rule is adopted as currently proposed. “Developers, ranchers, and private landowners in the State of Arizona could see a tremendous increase in the need to obtain expensive and time consuming Section 404 permits from the Corps,” said Vanessa Hickman, Arizona State Land Commissioner. “It is equally disconcerting that under the proposed rule there is no grandfathering type of protection for those people who, in the last five years, have received a jurisdictional decision from the Corps, and are operating accordingly,” Hickman said. As a result, a great deal of anxiety is being created in the development and financing industries over whether or not those with prior jurisdictional decisions would have to reapply for new decisions, and possibly new Section 404 permits. It is unclear what affect this would have on the work flow of existing projects.

The public review and comment period is open until October 20, 2014. Those interested in getting more information on this important action may do so at the following website: www.wslca.org.

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