

AMERICANS FOR PROSPERITY®

February 28, 2012

Dear Senator Paul,

On behalf of more than 1.9 million Americans for Prosperity activists in all 50 states, I applaud your introduction of S. 2122, the Defense of Environment and Property Act. Your bill would rein in the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Army Corps) and put a stop to their attempt to impose costly environmental regulations on *all* the land and *all* the water in the United States.

The Clean Water Act (CWA) was enacted in 1972 as a broad new federal effort to control water pollution in our country. However, since the States have only empowered Congress to regulate interstate commerce, the Act's new regulatory authorities were intended to be limited to "navigable waters" of the United States – waters that could conceivably be involved in interstate commerce through activities such as boat traffic.

In recent years, however, the EPA and the Army Corps have attempted to expand their jurisdiction to impose stringent new regulations on isolated wetlands, ephemeral streams, farm runoff and drainage, and other "waters" in the U.S. that are arguably not at all connected to navigable waters nor interstate commerce. [A recent guidance document](#), for example, tries to circumvent both Congress and multiple Supreme Court rulings on wetlands regulation.

Oftentimes these regulations impose stringent restrictions on private property that not only usurp property rights and other freedoms but also cause real economic harm to landowners who can no longer use their land productively as they see fit. In 1998 [the Congressional Budget Office estimated](#) that wetlands regulations alone stripped as much as \$1.85 billion in value from Americans' property each year. Thankfully, your legislation would begin to resolve this problem.

First and foremost, your bill clarifies that the CWA applies only to waters that are "navigable-in-fact" and any other common bodies of water like streams and rivers that directly connect to these navigable-in-fact waters. No more imposing strict regulations on little creeks that show up when heavy rains come from time to time. No more imposing the government's will on soggy ground that is far from and in no way connected to actual navigable waters. This would force federal bureaucrats to finally recognize that there are in fact some limitations to their regulatory reach, and leave the rest to states and localities where the jurisdiction belongs.

Other provisions in your bill are likewise important. Your bill prohibits the EPA and the Army Corps from issuing new rules or publishing guidance documents that are intended to circumvent Congress' will. Federal regulators are barred from entering private property to conduct environmental observations without the property owner's written consent. And it forces federal regulators to compensate landowners for lost property value whenever they designate an area as a wetland under the CWA and off-limits to any profitable use – rightly compensating property owners for what are truly [regulatory takings](#) under the Constitution's Fifth Amendment.

Regulations that help to keep America's waterways clean and safe are indeed important, but these days the EPA and the Army Corps are abusing the authority they were given for a power grab at the expense of private property owners. Your legislation would rein in these out-of-control agencies and restore balance between the important goals of controlling water pollution and protecting private property rights.

Americans for Prosperity is proud to support S. 2122, the Defense of Environment and Property Act. I urge your colleagues to support passage of this important legislation and I look forward to working with you in the future.

Sincerely,



James Valvo
Director of Government Affairs
Americans for Prosperity

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