

United States Senate

WASHINGTON, DC 20510

September 16, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Director Mulvaney:

We write to express our strong opposition to the U.S. Army Corps of Engineers' (Corps) proposed rulemaking regarding the use of Corps reservoir projects for domestic, municipal, and industrial water supply (81 FR 91556). Along with a number of states, tribes, and stakeholders, we have attempted to provide input to the Corps on its proposed implementation of federal law, but our concerns have not been adequately addressed. It is our understanding a final regulatory action by the Corps is imminent and will be submitted to your office for review. We urge you in your capacity to direct the Corps to make the adjustments necessary to follow decades of federal precedent and respect state and tribal water authority.

As it relates to the arid Western states, Congress and the Courts have given clear and consistent deference to states for water allocation from statehood through the 1944 Flood Control Act (FCA) and the Water Supply Act (WSA) of 1958. In the Corps' proposed regulation, it assumes water appropriation authority for all waters surrounded by Corps property. In fact, this has been the practice since 2010 with the implementation of Real Estate Policy Letter 26 requiring water supply agreements. Prior to the 2010 policy and the current proposed rulemaking, all that was required in making a water withdrawal across Corps property was obtaining a real estate easement.

The Corps' preferred alternative ignores both precedent and statute that the natural flows of the river remain squarely under the State's jurisdiction, despite construction of Corps dams and reservoirs. Using the Missouri River as an example, as long as its flows continue to be greater than the overall use granted by the states, water users are not benefiting from storage in Corps reservoirs. Therefore, water users should not be required to obtain water supply agreements with the Corps or pay any fees. If flows are less than appropriated, the states take measures accordingly to reduce water use. Ultimately, the states are responsible and will take the appropriate action. It was never the intention of Congress to federalize all of the water in our country's major rivers. That should not change.

Recently, the Western Governors' Association, Conference of Western Attorneys General, National Water Supply Alliance, Western States Water Council, and National Water Resources Association sent bipartisan letters to you expressing similar concerns. We would like to reiterate our shared concern: "We respectfully request that the Water Supply Rule be withdrawn, and the Corps be instructed to comply with state water laws in the exercise of its authority under the WSA and FCA" ... "the Corps has failed to meaningfully consult with states, on a government-to-government level, during the development of the Proposed Rule, contrary to the directives of Executive Order 13132." This rule ought to be withdrawn or at least revised to accommodate state and tribal input in accordance with the law.

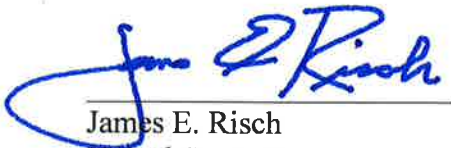
Sincerely,



Kevin Cramer
United States Senator



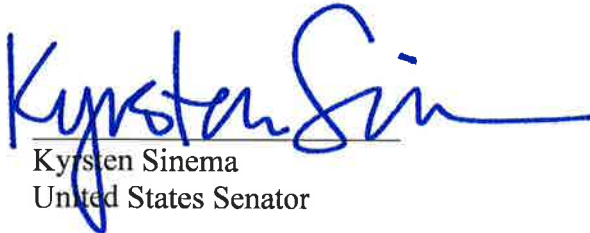
Mike Crapo
United States Senator



James E. Risch
United States Senator



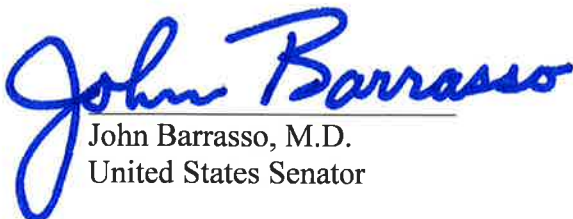
Steve Daines
United States Senator



Kyrsten Sinema
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Ron Wyden
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John Barrasso, M.D.
United States Senator



Michael B. Enzi
United States Senator



John Hoeven
United States Senator



Ted Cruz
United States Senator



Martha McSally
United States Senator



James M. Inhofe
United States Senator



M. Michael Rounds
United States Senator



Cory Gardner
United States Senator



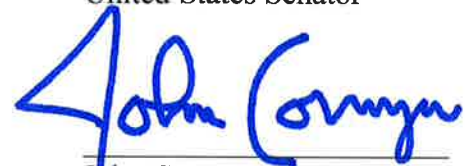
Jeffrey A. Merkley
United States Senator



John Thune
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John Cornyn
United States Senator



Michael F. Bennet
United States Senator

Cc: Russell Vought, Acting Director, Office of Management and Budget