

Floor Statement of Rep. Jim Moran
Safe Climate Caucus
July 9, 2013

Madam Chairwoman, I do have an amendment with our colleague John Dingell. The amendment simply strikes section 107 of this bill. The reason for doing this is that section 107 would prevent the Corps of Engineers from updating regulations and guidance defining what waters and wetlands are subject to the Clean Water Act.

Even though everyone, including industry, agrees there is confusion regarding what waters while under federal jurisdiction, section 107 would deliberately continue this confusion.

Many private commercial interests have gone on record in support of clarifying the term “waters of the United States,” but that clarification would be prohibited under section 107 of this bill.

Madam Chairwoman, there have been two Supreme Court cases on this subject – Solid Waste Agency of Northern Cook County in 2001 and Rapanos in 2006.

Combined, these two rulings have created confusion and uncertainty regarding the limits of the federal jurisdiction under the Clean Water Act. In layman’s terms, the Court called into question the federal government’s jurisdiction the further away the water was from where you could float a boat all year long.

In both cases, though, the majority of the Court could not agree on where federal jurisdiction should end. Are intermittent streams and rivers that only flow seasonally under federal jurisdiction? Sixty percent of all stream miles in the lower 48 states fall into the category of intermittent or ephemeral. In other words, they don’t exist for some part of the year. Yet they receive 40% of all individual wastewater discharges. Even more importantly, more than 117 million Americans

get some of their drinking water from these very streams that don't flow year-round.

Section 107 of this bill, though, would ensure that these sources of drinking water remain at increased risk of pollution.

With rising temperatures, more severe droughts, and climate change, the protection of our waters and wetlands are a greater concern than ever.

That's why I mention the Asian carp, the snakes, severe things are happening. The most important thing that is happening is that climate change is creating a very extreme threat to every American, and we're seeing it in bodies of water across the country.

Before my colleagues suggest we shouldn't worry about climate change, that states have authority in the absence of federal authority, I should tell my friends that argument doesn't hold water in states that use the federal definition to run their program.

Forty-eight states share common water bodies. Without federal jurisdiction, no state can tell an upstream state what to do unless we have a baseline minimum federal standard that all states must abide by.

Through a public comment process and appropriate Congressional oversight, we can allow the Administration to finalize its guidance and eventually move forward on a formal rulemaking process. Or Congress could define "navigable water" ourselves. But why would this Congress do its job when it can complain about the Administration not doing its job?

Madam Chairwoman, two years ago the Court and EPA issued a draft guidance to provide additional clarity on this issue. They took public comment on the draft for 90 days and received over 230,000 comments on the guidance. The draft guidance provides a more

predictable and consistent procedure for identifying waters and wetlands protected under the Clean Water Act.

It focuses on protecting smaller waterways that keep downstream water safe from upstream pollutants, and on protecting adjacent wetlands that filter pollution and store water and helps keep communities safe from floods. The guidance also maintains all of the existing exemptions for agricultural discharges and waters and identifies specific types of water bodies which it does not apply. Areas like artificial lakes, ponds, and many types of drainage, and irrigation ditches.

It does not extend federal protection to any waters not historically protected under the Clean Water Act and is fully consistent with the law and the decisions and instructions of the Supreme Court, so I think we should let the Administration go forward, provide greater clarity, and we can only do that by striking section 107.