**Draft Letter to Members of Congress**

[USE YOU COUNTY’S LETTERHEAD]

[Date]

The Honorable (Congressional Members Name)

Address

Washington, DC

**Re: U.S. EPA and U.S. Army Corps of Engineers Proposed Rule on “Definition of “Waters of the United States Under the Clean Water Act,” Docket No. EPA-HQ-OW-2011-0880**

Dear (Members Name):

I am a county [official/staff/title] and I am writing on the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed rule regarding *Definition of Waters of the U.S. Under the Clean Water Act,* Docket No. EPA-HQ-OW-2011-0880. This proposed rule was released on April 21, it

would amend the definition of “waters of the U.S.” and expand the range of waters that fall under federal jurisdiction.

As your constituent, I am bringing this proposed rule to your attention because it will have a significant impact in our local jurisdiction. In (name) county, (xx) miles of roads and (xx) miles of roadside ditches would be impacted, as would (xx) miles of flood channels and/or drainage ditches. Since it’s likely the issue will come up during the appropriations process, I wanted to ensure you knew the proposal would have a negative impact in our county. I would urge you to support any measure that would delay or stop implementation of this rule until concerns are addressed.

The proposed “waters of the U.S.” regulation from EPA and the Corps could have a significant impact on counties across the country, in the following ways:

* **Seeks to define waters under federal jurisdiction:** The proposed rule would modify existing regulations, which have been in place for over 25 years, regarding which waters fall under federal jurisdiction through the Clean Water Act (CWA). Because the proposed rule could expand the scope of CWA jurisdiction, counties could feel a major impact as more waters become federally regulated and subject to new rules or standards.
* **Potentially increases the number of county-owned ditches under federal regulation:** The proposed rule would define some ditches as “waters of the U.S.” if they meet certain conditions. This means that more county-owned ditches would likely fall under federal oversight. In recent years, Section 404 permits have been required for ditch maintenance activities such as cleaning out vegetation and debris. **Once a ditch is under federal jurisdiction, the Section 404 permit process can be extremely cumbersome, time-consuming and expensive, leaving counties vulnerable to citizen suits if the federal permit process is not streamlined.**
* **Applies to all Clean Water Act programs, not just Section 404 program:** The proposed rule would apply not just to Section 404 permits, but also to other Clean Water Act programs. These programs would subject county governments to increasingly complex and costly federal regulatory requirements under the proposed rule which impacts local stormwater and pesticide application programs, state water quality standards designations, green infrastructure and water reuse.

Key terms used in the proposed regulation—tributary, adjacent waters, riparian areas, flood plains, and even ditch exemptions on uplands and flow—are unclear. It is uncertain how these definitions will be used to effectively implement various CWA programs.

More importantly, the agencies’ cost-benefits analysis—*Economic Analysis of Proposed Revised Definition of Waters of the U.S.* (March 2013), acknowledges the data used and assumptions made to craft the analysis may be flawed. This is of supreme concern to local governments who may serve as both the regulator and the regulated under CWA. If costs and implications of the changes are not recognized ahead of time, it will have a negative impact on local governments.

If you have any questions, please do not hesitate to contact me.

Sincerely,

(sig)

(Name)

(Title, County, State)

cc: NACo