Thank you, Madam President. I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. COLLINS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:35 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. BALDWIN).

WATER RESOURCES DEVELOPMENT ACT OF 2013—Continued

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. What is the order?

The PRESIDING OFFICER. The Senate is considering S. 601.

Mrs. BOXER. We are working on our finite list, and we expect to make our unanimous consent shortly.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. LANDRIEU. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. While we have some down time on the floor to wait for the 2:30 hour—I believe we are going to have some action on the WRDA bill, which is very important—I thought I would take this time to talk about an amendment I have pending on the WRDA bill. It is an amendment that I offered for myself, Senator VITTER, Senator SCHUMER, and Senator MENENDEZ. Several other Senators have expressed their strong support over the weekend on both sides, Republicans and Democrats.

There are many States in the Union, and Louisiana is only one—the State of Florida, the State of California, the State of Mississippi, the State of Alabama, other coastal States and, yes, some inland States—that are going to be terribly disadvantaged if the Landrieu-Vitter amendment does not pass on the WRDA bill. What is going to happen because of a reform bill—parts of it were necessary, but there were some parts that, in my view and in the view of many Senators, should never have passed as part of the flood insurance reform bill.

The reason some of us are fairly exercised about this is the bill itself, the reform bill to reform the Flood Insurance Program of the United States, never came to this floor for debate. It came out of the Banking Committee, and then it was basically tucked into a larger omnibus bill, which happens sometimes. This is not the only or the first time it has happened. It is very unfortunate that it happened with this bill.

In our haste and in our good intentions to try to put national flood insurance on a more even financial keel, we have put the ability, unfortunately, in this bill for flood insurance rates to go up 20 percent a year on hundreds of thousands of first homes in this country—not second homes, not vacation homes, but first homes. The Landrieu-Vitter amendment doesn't try to solve this whole problem on the WRDA bill. It is going to take a little bit of work, which we can do, working together in good faith on behalf of our constituents.

This is big government at its worst—passing a reform bill and making the cure worse than the disease. In this case, for my constituents and for constituents in Florida, Mississippi, California, and New Jersey, we would have taken the disease as opposed to the cure. The cure is going to kill us. We weren't sure about the disease, but the cure is going to kill us.

Our papers have been editorializing for days since this issue has come to the surface on the WRDA bill. Our largest newspaper or second largest newspaper editorialized this morning and spoke about a quite senior woman—in her eighties—who lives with her daughter, who is in her sixties, in Plaquemines Parish. It is very typical to have families of different generations living together. They were in Plaquemines Parish before the flood insurance measure was ever passed.

We were living in Louisiana before this Nation was a nation. Our people have been down there a long time living on this water. They built their houses centuries—not this couple, but we had houses built centuries before this bill was ever passed. Now, what the law—the cure that is going to kill us—says is that this is their choice: They can elevate their home 18 feet, which probably would cost $50,000, which they don't have, or their flood insurance will go up to something on the order of $15,000 or $20,000 a year, which they can't pay.

One may say: That is too bad. Let them sell the house.

Their house has no value.

This is a dilemma not just for the people of Louisiana but for people from Mississippi, Alabama, California, and New York. We have a solution. The solution I have offered is temporary until we can be smart and think about how to fix this, and it doesn't cost anything.

I am begging Members to allow us this short period of time to get this cure corrected. We can find a way to make this program balance. We don't have to do that today, at this moment. Give us a little breathing room to figure this out. I believe this program could be self-sustaining. I am not an expert on insurance, but I am very fortunate to serve with colleagues who are. I am sure we can put our heads together and come up with something better than what is coming down like a firehose out there on lots of people in communities in Florida, Louisiana, Mississippi, and Alabama.

My understanding is—the managers are not on the floor—that there are about eight or nine amendments that have been worked out, hopefully, on both sides of the aisle. One of them is the Landrieu-Vitter fix, the flood insurance amendment that has zero cost to the taxpayer—zero. It is a temporary reprieve of rates going up for grandfathered homes, which affects many people in Florida, Louisiana, and in other States as well. It has a zero score. The CBO has testified. We have letters from CBO.

Please give our people this breathing room. I promise that I will work in good faith.

There are probably a few other things that need to be fixed in this flood insurance bill as we find a better way to lower costs to the taxpayer and to provide opportunities for people to live on a mountaintop if they choose, in a valley or on the coast, but to be safely sustainable. We all need to work together as a country. We can find an affordable way for our people—and not just millionaires—to be able to live on the coast. We have to make room for our fishermen, our agriculture, our farmers, and our aquaculture folks who have invested a good amount of money in helping to build more sustainable fisheries for our Nation. We have people who have to live near the water for commerce and trade. Not everybody lives by the water to vacation. Some people live by the water to work, which is an essential part of the work to keep this country moving forward. We have to figure out a way to allow them to do that in an affordable manner without completely undermining the coastal counties of our country.

Senator SCHUMER is on the floor now with some others who also have been working. I thank them for working over the weekend. Let's help them get this list of amendments cleared. One of those amendments will be the Landrieu-Vitter amendment on fixing temporarily—giving some reprieve to thousands of homeowners who are desperate for a signal from us that we get it, we understand. We didn't correct this appropriately. We are going to respond, as a democracy should, and give them a little signal today that as the WRDA bill moves forward, we can fine-tune and modify this flood insurance reform.

I understand we are ready for action on WRDA.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. BOXER. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS NOS. 847, 899 AS MODIFIED, 895, 894, 867, 872, 912, 880, 904, 884, 870 AS MODIFIED, 911 AS MODIFIED, 882, 903 AS MODIFIED, 906 AS MODIFIED, 893, 898, 861 AS MODIFIED, 907, AND 896 EN BLOC

Mrs. BOXER. For the interest of Senators, we are going to very shortly propound a consent agreement that has been cleared by Senator VITTER and myself and we will see where that takes us. If it needs to be modified, we may well do that, but I want Senators to know it is our hope we can avert a cloture vote at this time.

I ask unanimous consent the following amendments be considered and agreed to en bloc: Baucus No. 847, Boxer-Vitter No. 899 as modified, Inhofe No. 895, Wicker No. 894, Inhofe No. 867, Boozman No. 872, Thune No. 912, Cornyn No. 880, Murkowski No. 904, Klobuchar No. 884, Wyden No. 870 as modified, Cochran No. 911 as modified, Carper No. 882, Murkowski No. 903 as modified, Durbin No. 906 as modified, Levin No. 893, Collins No. 898, Cardin No. 861 as modified, Brown-Graham No. 907, and Wyden No. 896; further, that the only remaining amendments in order to the bill be the following: Inhofe No. 797, Barrasso No. 868, Sanders No. 889, Johnson and Landrieu—Johnson No. 891, Landrieu No. 888, Coburn No. 815, Coburn No. 816, Boozman No. 822, Merkley No. 866, Udall of New Mexico No. 853, and Hoeven No. 909; further, that no second-degree amendments be in order to any of the amendments prior to votes in relation to the amendment; that the time until 5 p.m. be equally divided between the two leaders or their designees for debate on all of the amendments; that at 5 p.m. the Senate proceed to vote in relation to the amendments in the order I have listed; that all after the first vote be 10-minute votes; that there be 2 minutes equally divided prior to each vote; that the following amendments be subjected to a 60-affirmative-vote threshold: Sanders No. 899, Johnson No. 891, Landrieu No. 888, and Barrasso No. 868; finally, that upon disposition of the Hoeven amendment No. 909, the cloture motion be withdrawn, the Senate proceed to vote on the passage of S. 601, as amended.

The PRESIDING OFFICER. Is there objection? The Senator from Pennsylvania.

Mr. TOOMEY. Madam President, reserving the right to object, I want to point out there is one amendment in this package that is very troubling to me. Under the current flood insurance law we passed just 10 months ago, we put in place a mechanism to diminish the subsidization that occurs now where homeowners in low-risk areas are made to subsidize homeowners in high-risk areas by the nature of the way premiums are set. The existing law is designed to diminish significantly that unfair subsidy that occurs, and I think that is why the chairman and the ranking member of the Banking Committee and many others of our colleagues oppose this amendment.

If this amendment goes through, the Landrieu amendment No. 888, then for 5 years this reform cannot take place and that means not only do people in low-risk areas continue subsidizing people in high-risk areas, but because people in high-risk areas are paying lower premiums than what they ought to pay to reflect the risk they are taking, it creates the moral hazard of a risk to continue building in high-risk areas with the expectation this will continue and therefore jeopardizes taxpayer funds.

This is already a program that is $24 billion in debt and that is the reason I object.

The PRESIDING OFFICER. Objection is heard. The Senator from California.

Mrs. BOXER. Madam President, it is my understanding, listening to my friend from Pennsylvania, that he objects to the Landrieu amendment. It is also my understanding that Senator LANDRIEU would like to be heard on this matter. Then I will propound a new consent request. I ask she get the floor and I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I wish to clarify through the Chair that the Senator from Pennsylvania is not objecting to the long list of amendments as described by the chairman of the committee, he is only objecting to amendment No. 888 and objecting to a vote on amendment No. 888 by myself, Senator VITTER, Senator SCHUMER, Senator MENENDEZ, Senator LAUTENBERG, and others; is that correct? Is the Senator objecting to a vote or to the amendment?

Mr. TOOMEY. Madam President, my understanding is there is a unanimous consent request for a series of amendments on this bill, and I am objecting to that consent request because it contains the Landrieu amendment No. 888.

Ms. LANDRIEU. So it is my understanding, Madam President, through the Chair, that the Senator is objecting to a vote on the amendment. He is certainly entitled, in my view, to vote against the amendment. That is what debate on the floor is all about. But he is not expressing his objection to that. He is objecting to having a vote on the amendment; is that correct?

Mr. TOOMEY. Madam President, as I said earlier, this is a matter that has been litigated and adjudicated in this body. We have had a vote on this. This has not come back through committee. This would cause considerable risk to taxpayers. If the Senator from Louisiana believes this is something that needs to be addressed yet again, despite the fact that 10 months ago we had a vote on this—and we did vote, then I would be happy to work with the Senator on how we might address that. But my objection still remains.

Ms. LANDRIEU. Madam President, I am just trying to get clarification through the Chair from the Senator from Pennsylvania. I understand he objects to my amendment. That is not what I am asking him. I would just like a yes or no answer; is he objecting to a vote on the amendment?

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. I think I answered the question.

Ms. LANDRIEU. He did not answer the question clearly, but since he will not answer the question, which is unfortunate, I wish to make it clear for the record that the Senator from Pennsylvania is objecting to a vote on the Landrieu-Vitter amendment. He most certainly is entitled to vote no on our amendment. Other Senators may vote no. But I want the record to show he is saying, no, we cannot even have a vote.

If I could have 5 more minutes. I will take 3 more minutes. I want to say how disappointing it is to me because the Senator is unfortunately wrong on several counts.

No. 1, this floor never voted on the Biggert-Waters bill. As I said a dozen times, the bill came out of the Banking Committee with broad bipartisan support. A different bill was passed by the House. Then these two bills that were very different and tried to ''reform the flood insurance program'' were tucked into a conference committee report. I want the record to show this floor never voted on the reform, and the cure that came out of the conference committee is worse than the disease.

Second, I want to tell the Senator from Pennsylvania I think this is going to come back to haunt him because the people of his own State are going to be negatively affected by his actions today.

There are 74,000 people in Pennsylvania—4,000 in Philadelphia alone but 74,000 people in Pennsylvania who pay flood insurance rates. Under the proposal that never came to this Senate floor, those rates in some cases can go up 20 or 30 percent in 1 year.

For the record, I want to put in: In Florida, 2 million people are affected; Texas, 645,000; Louisiana, 486,000; California, 256,000; New Jersey, 240,000; South Carolina, 205,000; New York, 178,000; North Carolina, 138,000—I am not going to read all of this—Virginia, 116,000; and in Pennsylvania, 74,000. I could go on. I ask unanimous consent this list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NFIP POLICIES BY STATE

[County/City Examples]

State/County/City	Policies in Force
1 Florida	2,060,245
City of Fort Lauderdale	42,126
2 Texas	645,615
City of Houston	132,529
3 Louisiana	486,580
Jefferson Parish	121,501
4 California	256,095
City of Sacramento	46,758
5 New Jersey	240,857

NFIP POLICIES BY STATE—Continued

[County/City Examples]

State/County/City	Policies in Force
Ocean City	17,370
6 South Carolina	205,146
Beaufort County	54,201
7 New York	178,863
New York City	44,415
8 North Carolina	138,605
Dare County	22,157
9 Virginia	116,275
City of Virginia Beach	25,530
10 Georgia	96,906
Chatam County	31,870
11 Mississippi	75,186
Harrison County	20,271
12 Pennsylvania	74,006
Philadelphia	4,330
13 Maryland	73,696
Ocean City	27,232
14 Massachusetts	59,420
Plymouth County	10,748
15 Hawaii	59,290
Honolulu	37,398
16 Alabama	58,048
Baldwin County	26,985
17 Puerto Rico	55,964
Puerto Rico	50,935
18 Illinois	48,498
Cook County	17,777
19 Washington	45,200
Skagit County	5,728
20 Ohio	41,920
Ottawa County	1,962
21 Connecticut	41,710
Fairfield County	17,140
22 Arizona	35,000
Scottsdale	8,672
23 Oregon	34,764
Portland	2,148
24 Tennessee	33,745
Davidson County	7,377
25 Indiana	30,933
Indianapolis	5,852
26 Missouri	26,640
St. Louis County	1,229
27 Michigan	26,247
City of Dearborn Heights	1,232
28 Delaware	26,011
Sussex County	21,250
29 Kentucky	25,179
Louisville-Jefferson County	5,503
30 Arkansas	21,459
Little Rock	1,487

Ms. LANDRIEU. Second, I have a letter from the National Association of Home Builders—not a liberal-leaning organization and most certainly not a group that just works in Louisiana. People build homes all over America including in Pennsylvania. They sent a strong letter urging us to adopt the Landrieu-Vitter amendment which will just temporarily put a hold on raising rates 20 to 40 to 60 to 80 percent on grandfathered homes that were around before the flood insurance program was ever invented by Members of this body, well before I was even a Senator.

What this says is the program should be widely available, it should be affordable, so people can live in many different places of America. This is one big great country with lots of different kinds of neighborhoods. That is what the National Association of Home Builders said, and I am going to submit their letter.

I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, DC, May 14, 2013.

Hon. HARRY REID,
Majority Leader, U.S. Senate, Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I am writing to express strong support for amendment #888 (sponsored by Senators Mary Landrieu and David Vitter) to S. 601, the Water Resources and Development Act of 2013. This amendment would delay flood insurance premium increases on certain properties for 5 years. NAHB believes a financially-stable National Flood Insurance Program is in all of our interests, yet we must ensure that overall affordability is not adversely affected.

The Biggert-Waters Flood Insurance Reform Act of 2012 (BW12) reauthorized the NFIP for five years and included a phase-in to actuarial rates to help return the program to sound financial footing. Also included in the law was the requirement for a study and a report on the affordability of NFIP premiums and the effects of increased premiums on low-income homeowners.

The BW12 phase-in to actuarial rates is separated into two different segments of policy-holders. Some homeowners will start to see premium increases in October, while the others will start in 2014, once the new scientific rate maps have been drawn and approved. Over the next year and a half, many hard working homeowners in flood-prone areas (and newly-drawn flood prone areas) could see large flood insurance premium increases. The Landrieu-Vitter amendment ensures that the later changes are delayed to help Congress re-examine consumer affordability and answer other questions about implementing BW12. NAHB believes this amendment is a first step in balancing consumer affordability and re-establishing the solvency of the program.

The homebuilding industry depends on the NFIP to be annually predictable, universally available, affordable and fiscally viable. This program enables the home building industry to deliver safe, decent, affordable housing to consumers in all areas of the country. We urge you to support this important amendment that balances the fiscal solvency of the NFIP and consumer affordability.

Sincerely,

JAMES W. TOBIN III,
Senior Vice President & Chief Lobbyist.

Ms. LANDRIEU. Evidently, the Senator from Pennsylvania doesn't understand this. That is fine. We have disagreements and I respect him. He should vote no. But to stop a vote?

The third and final argument I am going to make in my 30 seconds left, we worked so hard on this amendment that it doesn't even cost anything.

We have a zero score—zero. It does not cost one dime, not one dollar, and still the Senator from Pennsylvania, with 74,000 people in his State who could be affected, is objecting to even voting on giving people a chance. We are going to be on this issue again; it is going to come back.

I praise Senators BOXER and VITTER for their work on WRDA. It is a shame that we cannot even get a vote to postpone this issue to try to see if we could make it more affordable. It doesn't cost anything.

I say to the Senator from California that I am sorry for holding this up. I thought this was important. We worked on it all week. Everybody is cleared except for one Senator from Pennsylvania.

I yield the floor.

The PRESIDING OFFICER (Mr. MANCHIN). The Senator from Louisiana.

Mr. VITTER. Madam President, I rise to very briefly agree with two key points made by my colleague from Louisiana. First of all, as far as the substance of this amendment goes, I wholeheartedly agree with her, and that is why I am a sponsor of this amendment as well.

We will visit this issue again because it is vitally important that we get it right—not just for the tens of thousands of folks from Louisiana but for millions of Americans across the country. We need to get this right, and we don't yet have it right.

Secondly and also very importantly, I absolutely agree that we should have debate and votes on the Senate floor. I don't think any Member should object to just having a vote on a matter.

My colleague, the Senator from Pennsylvania, has been a leading advocate to have an open amendment process on the Senate floor, to allow votes, and I agreed with that. I fought with the chair of the committee to have an open amendment process in the context of this bill, and we got it. Now, at the end of the day, he objects to even having a vote on a particular amendment he doesn't like. The Senator cannot have it both ways. If the Senator wants an open amendment process on the floor, as I do, then he will have to accept that he may have to take votes on amendments he doesn't agree with. I accept that; I wish he would accept that. I hope it will continue and grow from here.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I think everybody who is listening to this understands that there has been a disagreement here—a pretty tough one.

I have to praise Senator LANDRIEU for saying: Look, I am going to bring this fight back another day. She has told me she would be willing to support a new, modified request—the same one I made about 10 minutes ago—and take out Johnson amendment No. 891 and Landrieu amendment No. 888. I believe the new request will be acceptable to all in the Senate.

I renew my request with that change—the deletion of Johnson amendment No. 891 and Landrieu amendment No. 888. I ask unanimous consent that we move forward with this agreement at this time.

The PRESIDING OFFICER. Is there objection?

The Senator from Florida.

Mr. RUBIO. Mr. President, reserving the right to object, we realized over the last 72 hours that we were all scandalized when we learned that the Internal Revenue Service of the United States and employees within the Internal Revenue Service were targeting fellow Americans and political organizations because of their political views. The feelings we have are bipartisan—I hope they are. I don't think any of us want to see an agency of government being used to target our fellow Americans because of their points of view on a political issue. This is a very serious issue.

Yesterday I called for the President to ask for the resignation of the acting chief of the IRS. I asked that there be a criminal investigation launched in this matter, which Attorney General Holder has announced today.

I have prepared an amendment that I think is timely and that I hope we will consider in this body that makes it a crime for an employee of the IRS to target individual taxpayers or organizations because of their political views. I stand today to ask if the chairwoman would consider consenting to allow my Rubio amendment No. 892 to be included in the unanimous consent agreement.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. If I might respond to my friend's request, the American people need to know that we are dealing on this Senate floor with a bill that is the Water Resources Development Act. This bill is about improvements in flood control so we don't have anymore Hurricane Sandys. This is also about port-deepening and about 500,000 jobs. This is about restoring the Chesapeake Bay and the Everglades in my friend's home State. What a beautiful spot that is, I say to my friend. It is not about the IRS scandal, although I could not agree more with my friend. Anyone who would play politics at the IRS is doing a disservice to this Nation. I am happy to look at this law. They ought to be canned.

Mr. President, I ask unanimous consent that an inquiry which took place by the IRS into a church in my State—the All Saints Church—in the district of ADAM SCHIFF be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Los Angeles Times, Dec. 9, 2005]

INQUIRY INTO IRS INVESTIGATIONS OF CHURCHES IS SOUGHT

(By Patricia Ward Biederman)

Expressing concern about the 1st Amendment rights of clergy, Rep. Adam B. Schiff (D–Burbank) and two Republican colleagues called Thursday for an investigation by the U.S. Government Accountability Office into the IRS' recent probes of alleged ''campaign intervention'' by churches, including Pasadena's liberal All Saints Church.

Schiff, whose district includes Pasadena, said he asked for information from the IRS on its church inquiries soon after learning in November that the local Episcopal church could lose its tax-exempt status because of an antiwar sermon preached by former Rector George Regas just before the 2004 presidential election.

Because the IRS has yet to respond to his request, Schiff said, ''I've gone to the next level.''

On Thursday, Reps. Walter B. Jones (R–N.C.) and Joe Pitts (R–Pa.) joined with Schiff in sending a letter to GAO Comptroller General David M. Walker. They asked the office to look into reports that the IRS is investigating places of worship ''based on the content of sermons or other discourse delivered as part of a religious service or gathering.''

Although the tax code prohibits tax-exempt organizations from ''intervening in political campaigns and elections,'' the congressmen said, ''We believe that the faith community has every right to express itself in the political process.''

Spokesman Eric Smith said IRS policy precludes commenting on requests such as the congressmen's. But Smith cited a report released by the Treasury Department in February that found the IRS had ''not . . .

All Saints Rector Edwin Bacon announced Nov. 6 that the church's tax-exempt status was threatened.

The congregation has received wide support, from evangelicals as well as liberal groups. All Saints expects an IRS decision soon, a church spokesman said.

Mrs. BOXER. Republicans and Democrats at that time asked for investigations into this, and this is from 2005.

I ask unanimous consent that an article that talks about the investigation of the NAACP that involved the IRS in 2006 be printed in the RECORD.

This is a continuing scandal. It is outrageous, and I think anyone who goes after a liberal group should be canned. Anyone who goes after a conservative group should be canned unless there is reason to do so. But it appears they are not following the rules of nonprofits, which is they cannot be political.

I ask that those items be placed in the RECORD only to remind people that this is a bad and terrible thing that has happened, and it has been a while.

I object to the request that we place such an urgently important matter on this long-term bill. It is going to take a while for us to get it through the House. We don't know when the conference will come back.

I object to the unanimous consent request to turn a bill like this into a bill about the IRS scandal.

The PRESIDING OFFICER. First of all, on the second request of the Senator from California, is there any objection?

The Chair hears none.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, September 1, 2006]

IRS ENDS 2-YEAR PROBE OF NAACP'S TAX STATUS; LEADER'S CRITICISM OF BUSH IN 2004 DID NOT VIOLATE LAW, AGENCY DECIDES

(By Darryl Fears)

Nearly two years after a controversial decision to investigate the NAACP for criticizing President Bush during the 2004 presidential campaign, the Internal Revenue Service has ruled that the remarks did not violate the group's tax-exempt status.

In a letter released yesterday by the NAACP, the IRS said the group, the nation's oldest and largest civil rights organization, ''continued to qualify'' as tax-exempt.

If the NAACP were stripped of the status, donors would not be allowed to claim contributions to the group on income tax returns.

Federal law requires tax-exempt nonprofit organizations to be politically nonpartisan.

''It was an enormous threat,'' NAACP Chairman Julian Bond said of the investigation. The opposite outcome, he said, ''would have reduced our income remarkably.''

Bond reiterated his belief that the investigation was politically motivated. He said the decision, received by the NAACP on Aug. 9, ''meant that they thought they had harassed us enough and they could stop.''

In a response to lawmakers who expressed outrage over the investigation in 2004, IRS Commissioner Mark W. Everson said the agency's examinations are based on tax law, not partisanship.

The commissioner said the investigation of the NAACP was undertaken because two congressional leaders, whom he declined to name, requested it. They were unhappy because Bond criticized Bush in a speech in July 2004, saying his administration preached racial neutrality and practiced racial division.

''They write a new constitution of Iraq and they ignore the Constitution at home,'' Bond said.

After filing four freedom-of-information requests, NAACP lawyers discovered that far more than two members of Congress called for an investigation and that all were Republicans.

Republican Sens. Lamar Alexander (Tenn.) and Susan Collins (Maine) called for the investigation.

Others included Rep. Jo Ann S. Davis (R–Va.) and then-Rep. Larry Combest (R–Tex.). Former GOP representatives Joe Scarborough of Florida, who now hosts a talk show, and Robert L. Ehrlich Jr., currently governor of Maryland, also requested a probe.

The investigation started Oct. 8, 2004, a month before the election. As the investigation dragged on into the following February, the NAACP announced that it would not continue to cooperate.

Angela Ciccolo, an NAACP lawyer, noted that although Bond's remarks were made in July 2004, the investigation did not begin until October, just when the NAACP was attempting to register voters. ''The timing of the investigation is critical,'' she said.

When the investigation started, Bush and the NAACP were locked in a long-running feud that started shortly before the president's first election victory in 2000.

During that campaign, the NAACP ran television spots featuring the daughter of James Byrd Jr., a black man who was dragged to death behind a pickup truck in Texas in 1998. She criticized Bush, then governor of Texas, for not signing hate-crime legislation.

The rift grew when the NAACP charged that Republicans in Florida stole the 2000 election by turning black voters away from the polls.

Recently, however, the relationship between the group and Bush has begun to warm. Bush addressed the NAACP convention in July for the first time in his six years in office, avoiding becoming the first president since Warren G. Harding to snub the group for an entire presidency.

''It's disappointing that the IRS took nearly two years to conclude what we knew from the beginning: The NAACP did not violate tax laws and continues to be politically nonpartisan,'' said its president, Bruce S. Gordon.

CORRECTION-DATE: September 12, 2006; September 21, 2006

CORRECTION:

A Sept. 1 article incorrectly said that the Internal Revenue Service had named the NAACP as a group whose tax-exempt status was being investigated in response to questions from congressmen. Though the NAACP's status was investigated, the IRS did not name the group.

A Sept. 1 article incorrectly listed several Republicans as having called for an Internal Revenue Service investigation into the tax-exempt status of the NAACP. Named were Sens. Lamar Alexander (Tenn.) and Susan Collins (Maine); Rep. Jo Ann S. Davis (Va.);

and former representatives Larry Combest (Tex.), Joe Scarborough (Fla.) and Robert L. Ehrlich Jr. (Md.). The lawmakers forwarded complaints and requests for an investigation from constituents to the IRS.

LOAD-DATE: September 1, 2006.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. Mr. President, reserving the right to object, and I will not object to the unanimous consent request because of the importance of this issue to many States in the country, let me close by saying that we need to understand what happened here over the last 72 hours and what we found out. Employees of the Internal Revenue Service made a decision that they were going to specifically target groups who had things like ''tea party'' and the word ''patriot'' in their organization, groups who looked to do things like protect the Constitution of the United States. This is outrageous.

There is growing evidence that higher-ups—significant people in the IRS—knew about this and were not disclosing that to Members of Congress. Members of this body were asking the IRS directly: Are you involved in this? Is this happening? They were not giving us information we now know they had.

I will not object to the unanimous consent request because of the importance of this issue, but this issue will not and cannot go away because of the importance of it.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

The amendments were agreed to, as follows:

AMENDMENT NO. 847

(Purpose: To modify a provision relating to Northern Rockies headwaters extreme weather mitigation)

On page 236, strike line 13 and insert the following:

(f) EFFECT OF SECTION.—

(1) IN GENERAL.—Nothing in this section replaces or provides a substitute for the authority to carry out projects under section 3110 of the Water Resources Development Act of 2007 (121 Stat. 1135).

(2) FUNDING.—The amounts made available to carry out this section shall be used to carry out projects that are not otherwise carried out under section 3110 of the Water Resources Development Act of 2007 (121 Stat. 1135).

(g) AUTHORIZATION OF APPROPRIATIONS.—There is

AMENDMENT NO. 899, AS MODIFIED

(Purpose: To improve the bill)

On page 214, strike lines 15 through 20 and insert the following:

''(d) INTERIM ADOPTION OF COMPREHENSIVE MASTER PLAN.—Prior to completion of the comprehensive plan described under subsection (a), the Secretary shall adopt the plan of the State of Louisiana entitled 'Louisiana's Comprehensive Master Plan for a Sustainable Coast' in effect on the

On page 216, between lines 3 and 4, insert the following:

(c) EFFECT.—

(1) IN GENERAL.—Nothing in this section or an amendment made by this section authorizes the construction of a project or program associated with a storm surge barrier across the Lake Pontchartrain land bridge (including Chef Menteur Pass and the Rigolets) that would result in unmitigated induced flooding in coastal communities within the State of Mississippi.

(2) REQUIRED CONSULTATION.—Any study to advance a project described in paragraph (1) that is conducted using funds from the General Investigations Account of the Corps of Engineers shall include consultation and approval of the Governors of the States of Louisiana and Mississippi.

On page 222, line 14, strike ''2018'' and insert ''2023''.

On page 239, strike lines 14 through 19 and insert the following:

for the period beginning with fiscal year 2001 $450,000,000, which shall—

''(1) be made available to the States and locales described in subsection (b) consistent with program priorities determined by the Secretary in accordance with criteria developed by the Secretary to establish the program priorities; and

''(2) remain available until expended.''.

On page 293, line 2, strike ''amount'' and insert ''amounts remaining after the date of enactment of this Act''.

On page 347, line 12, strike ''or ecosystem restoration'' and insert ''ecosystem restoration, or navigation''.

Beginning on page 47, strike line 3 and all that follows through page 53, line 13, and insert the following:

SEC. 2014. DAM OPTIMIZATION.

(a) DEFINITION OF OTHER RELATED PROJECT BENEFITS.—In this section, the term ''other related project benefits'' includes—

(1) environmental protection and restoration, including restoration of water quality and water flows, improving movement of fish and other aquatic species, and restoration of floodplains, wetlands, and estuaries;

(2) increased water supply storage (except for any project in the Apalachicola-Chattahoochee-Flint River system and the Alabama-Coosa-Tallapoosa River system);

(3) increased hydropower generation;

(4) reduced flood risk;

(5) additional navigation; and

(6) improved recreation.

(b) PROGRAM.—

(1) IN GENERAL.—The Secretary may carry out activities—

(A) to improve the efficiency of the operations and maintenance of dams and related infrastructure operated by the Corps of Engineers; and

(B) to maximize, to the extent practicable—

(i) authorized project purposes; and

(ii) other related project benefits.

(2) ELIGIBLE ACTIVITIES.—An eligible activity under this section is any activity that the Secretary would otherwise be authorized to carry out that is designed to provide other related project benefits in a manner that does not adversely impact the authorized purposes of the project.

(3) IMPACT ON AUTHORIZED PURPOSES.—An activity carried out under this section shall not adversely impact any of the authorized purposes of the project.

(4) EFFECT.—

(A) EXISTING AGREEMENTS.—Nothing in this section—

(i) supersedes or modifies any written agreement between the Federal Government and a non-Federal interest that is in effect on the date of enactment of this Act; or

(ii) supersedes or authorizes any amendment to a multistate water-control plan, including the Missouri River Master Water Control Manual (as in effect on the date of enactment of this Act).

(B) WATER RIGHTS.—Nothing in this section—

(i) affects any water right in existence on the date of enactment of this Act;

(ii) preempts or affects any State water law or interstate compact governing water; or

(iii) affects any authority of a State, as in effect on the date of enactment of this Act, to manage water resources within that State.

(5) OTHER LAWS.—

(A) IN GENERAL.—An activity carried out under this section shall comply with all other applicable laws (including regulations).

(B) WATER SUPPLY.—Any activity carried out under this section that results in any modification to water supply storage allocations at a reservoir operated by the Secretary shall comply with section 301 of the Water Supply Act of 1958 (43 U.S.C. 390b).

(c) POLICIES, REGULATIONS, AND GUIDANCE.—The Secretary shall carry out a review of, and as necessary modify, the policies, regulations, and guidance of the Secretary to carry out the activities described in subsection (b).

(d) COORDINATION.—

(1) IN GENERAL.—The Secretary shall—

(A) coordinate all planning and activities carried out under this section with appropriate Federal, State, and local agencies and those public and private entities that the Secretary determines may be affected by those plans or activities; and

(B) give priority to planning and activities under this section if the Secretary determines that—

(i) the greatest opportunities exist for achieving the objectives of the program, as specified in subsection (b)(1), and

(ii) the coordination activities under this subsection indicate that there is support for carrying out those planning and activities.

(2) NON-FEDERAL INTERESTS.—Prior to carrying out an activity under this section, the Secretary shall consult with any applicable non-Federal interest of the affected dam or related infrastructure.

(e) REPORTS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act and every 2 years thereafter, the Secretary shall submit to Congress a report describing the actions carried out under this section.

(2) INCLUSIONS.—Each report under paragraph (1) shall include—

(A) a schedule for reviewing the operations of individual projects; and

(B) any recommendations of the Secretary on changes that the Secretary determines to be necessary—

(i) to carry out existing project authorizations, including the deauthorization of any water resource project that the Secretary determines could more effectively be achieved through other means;

(ii) to improve the efficiency of water resource project operations; and

(iii) to maximize authorized project purposes and other related project benefits.

(3) UPDATED REPORT.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall update the report entitled ''Authorized and Operating Purposes of Corps of Engineers Reservoirs'' and dated July 1992, which was produced pursuant to section 311 of the Water Resources Development Act of 1990 (104 Stat. 4639).

(B) INCLUSIONS.—The updated report described in subparagraph (A) shall include—

(i) the date on which the most recent review of project operations was conducted and any recommendations of the Secretary relating to that review the Secretary determines to be significant; and

(ii) the dates on which the recommendations described in clause (i) were carried out.

(f) FUNDING.—

(1) IN GENERAL.—The Secretary may use to carry out this section amounts made available to the Secretary from—

(A) the general purposes and expenses account;

(B) the operations and maintenance account; and

(C) any other amounts that are appropriated to carry out this section.

(2) FUNDING FROM OTHER SOURCES.—The Secretary may accept and expend amounts from non-Federal entities and other Federal agencies to carry out this section.

(g) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with other Federal agencies and non-Federal entities to carry out this section.

AMENDMENT NO. 895

(Purpose: To clarify the role of the Cherokee Nation of Oklahoma regarding the maintenance of the W.D. Mayo Lock and Dam in the State of Oklahoma)

At the end of title V, add the following:

SEC. 50_____. RIGHTS AND RESPONSIBILITIES OF CHEROKEE NATION OF OKLAHOMA REGARDING W.D. MAYO LOCK AND DAM, OKLAHOMA.

Section 1117 of the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4236) is amended to read as follows:

"SEC. 1117. W.D. MAYO LOCK AND DAM, OKLAHOMA.

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Cherokee Nation of Oklahoma has authorization—

''(1) to design and construct 1 or more hydroelectric generating facilities at the W.D. Mayo Lock and Dam on the Arkansas River in the State of Oklahoma, subject to the requirements of subsection (b) and in accordance with the conditions specified in this section; and

''(2) to market the electricity generated from any such hydroelectric generating facility.

''(b) PRECONSTRUCTION REQUIREMENTS.—

''(1) IN GENERAL.—The Cherokee Nation shall obtain any permit required by Federal or State law before the date on which construction begins on any hydroelectric generating facility under subsection (a).

''(2) REVIEW BY SECRETARY.—The Cherokee Nation may initiate the design or construction of a hydroelectric generating facility under subsection (a) only after the Secretary reviews and approves the plans and specifications for the design and construction.

''(c) PAYMENT OF DESIGN AND CONSTRUCTION COSTS.—

''(1) IN GENERAL.—The Cherokee Nation shall—

''(A) bear all costs associated with the design and construction of any hydroelectric generating facility under subsection (a); and

''(B) provide any funds necessary for the design and construction to the Secretary prior to the Secretary initiating any activities relating to the design and construction of the hydroelectric generating facility.

''(2) USE BY SECRETARY.—The Secretary may—

''(A) accept funds offered by the Cherokee Nation under paragraph (1); and

''(B) use the funds to carry out the design and construction of any hydroelectric generating facility under subsection (a).

''(d) ASSUMPTION OF LIABILITY.—The Cherokee Nation—

''(1) shall hold all title to any hydroelectric generating facility constructed under this section;

''(2) may, subject to the approval of the Secretary, assign that title to a third party;

''(3) shall be solely responsible for—

''(A) the operation, maintenance, repair, replacement, and rehabilitation of any such facility; and

''(B) the marketing of the electricity generated by any such facility; and

''(4) shall release and indemnify the United States from any claims, causes of action, or liabilities that may arise out of any activity undertaken to carry out this section.

''(e) ASSISTANCE AVAILABLE.—Notwithstanding any other provision of law, the Secretary may provide any technical and construction management assistance requested by the Cherokee Nation relating to the design and construction of any hydroelectric generating facility under subsection (a).

''(f) THIRD PARTY AGREEMENTS.—The Cherokee Nation may enter into agreements with the Secretary or a third party that the Cherokee Nation or the Secretary determines to be necessary to carry out this section.''.

AMENDMENT NO. 894

(Purpose: To express the sense of Congress that, in recognition of the contributions of Donald G. Waldon to the Tennessee-Tombigbee Waterway, a lock and dam on that waterway should be designated as the ''Donald G. Waldon Lock and Dam'')

At the end of title II, insert the following:

SEC. 2_____. DONALD G. WALDON LOCK AND DAM.

(a) FINDINGS.—Congress finds that—

(1) the Tennessee-Tombigbee Waterway Development Authority is a 4-State compact comprised of the States of Alabama, Kentucky, Mississippi, and Tennessee;

(2) the Tennessee-Tombigbee Authority is the regional non-Federal sponsor of the Tennessee-Tombigbee Waterway;

(3) the Tennessee-Tombigbee Waterway, completed in 1984, has fueled growth in the United States economy by reducing transportation costs and encouraging economic development; and

(4) the selfless determination and tireless work of Donald G. Waldon, while serving as administrator of the waterway compact for 21 years, contributed greatly to the realization and success of the Tennessee-Tombigbee Waterway.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, at an appropriate time and in accordance with the rules of the House of Representatives and the Senate, the lock and dam located at mile 357.5 on the Tennessee-Tombigbee Waterway should be known and designated as the ''Donald G. Waldon Lock and Dam''.

AMENDMENT NO. 867

(Purpose: To allow the Secretary to accept and expend non-Federal amounts for repair, restoration, or replacement of certain water resources projects)

At the end of title XI, add the following:

SEC. 11004. AUTHORITY TO ACCEPT AND EXPEND NON-FEDERAL AMOUNTS.

The Secretary is authorized to accept and expend amounts provided by non-Federal interests for the purpose of repairing, restoring, or replacing water resources projects that have been damaged or destroyed as a result of a major disaster or other emergency if the Secretary determines that the acceptance and expenditure of those amounts is in the public interest.

AMENDMENT NO. 872

(Purpose: To improve planning and administration relating to water supply storage activities)

At the end of title II, add the following:

SEC. 2_____. IMPROVING PLANNING AND ADMINISTRATION OF WATER SUPPLY STORAGE.

(a) IN GENERAL.—The Secretary shall carry out activities to enable non-Federal interests to anticipate and accurately budget for annual operations and maintenance costs and, as applicable, repair, rehabilitation, and replacements costs, including through—

(1) the formulation by the Secretary of a uniform billing statement format for those storage agreements relating to operations and maintenance costs, and as applicable, repair, rehabilitation, and replacement costs, incurred by the Secretary, which, at a minimum, shall include—

(A) a detailed description of the activities carried out relating to the water supply aspects of the project;

(B) a clear explanation of why and how those activities relate to the water supply aspects of the project; and

(C) a detailed accounting of the cost of carrying out those activities; and

(2) a review by the Secretary of the regulations and guidance of the Corps of Engineers relating to criteria and methods for the equitable distribution of joint project costs across project purposes in order to ensure consistency in the calculation of the appropriate share of joint project costs allocable to the water supply purpose.

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report on the findings of the reviews carried out under subsection (a)(2) and any subsequent actions taken by the Secretary relating to those reviews.

(2) INCLUSIONS.—The report under paragraph (1) shall include an analysis of the feasibility and costs associated with the provision by the Secretary to each non-Federal interest of not less than 1 statement each year that details for each water storage agreement with non-Federal interests at Corps of Engineers projects the estimated amount of the operations and maintenance costs and, as applicable, the estimated amount of the repair, rehabilitation, and replacement costs, for which the non-Federal interest will be responsible in that fiscal year.

(3) EXTENSION.—The Secretary may delay the submission of the report under paragraph (1) for a period not to exceed 180 days after the deadline described in paragraph (1), subject to the condition that the Secretary submits a preliminary progress report to Congress not later than 1 year after the date of enactment of this Act.

AMENDMENT NO. 912

(Purpose: To authorize the Secretary to assist Indian tribes in addressing shoreline erosion in the Upper Missouri River Basin)

On page 234, between lines 16 and 17, insert the following:

SEC. 5009. UPPER MISSOURI BASIN SHORELINE EROSION PREVENTION.

(a) IN GENERAL.—

(1) AUTHORIZATION OF ASSISTANCE.—The Secretary may provide planning, design, and construction assistance to not more than 3 federally-recognized Indian tribes in the Upper Missouri River Basin to undertake measures to address shoreline erosion that is jeopardizing existing infrastructure resulting from operation of a reservoir constructed under the Pick-Sloan Missouri River Basin Program (authorized by section 9 of the Act of December 22, 1944 (commonly known as the ''Flood Control Act of 1944'') (58 Stat. 891, chapter 665)).

(2) LIMITATION.—The projects described in paragraph (1) shall be economically justified, technically feasible, and environmentally acceptable.

(b) FEDERAL AND NON-FEDERAL COST SHARE.—

(1) IN GENERAL.—Subject to paragraph (2), the Federal share of the costs of carrying out this section shall be not less than 75 percent.

(2) ABILITY TO PAY.—The Secretary may adjust the Federal and non-Federal shares of the costs of carrying out this section in accordance with the terms and conditions of

section 103(m) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(m)).

(c) CONDITIONS.—The Secretary may provide the assistance described in subsection (a) only after—

(1) consultation with the Department of the Interior; and

(2) execution by the Indian tribe of a memorandum of agreement with the Secretary that specifies that the tribe shall—

(A) be responsible for—

(i) all operation and maintenance activities required to ensure the integrity of the measures taken; and

(ii) providing any required real estate interests in and to the property on which such measures are to be taken; and

(B) hold and save the United States free from damages arising from planning, design, or construction assistance provided under this section, except for damages due to the fault or negligence of the United States or its contractors.

(d) AUTHORIZATION OF APPROPRIATIONS.—For each Indian tribe eligible under this section, there is authorized to be appropriated to carry out this section not more than $30,000,000.

AMENDMENT NO. 880

(Purpose: To deauthorize portions of the project for East Fork of Trinity River, Texas)

At the end of title III, add the following:

SEC. 3_____. EAST FORK OF TRINITY RIVER, TEXAS.

The portion of the project for flood protection on the East Fork of the Trinity River, Texas, authorized by section 203 of the Flood Control Act of 1962 (76 Stat. 1185), that consists of the 2 levees identified as ''Kaufman County Levees K5E and K5W'' shall no longer be authorized as a part of the Federal project as of the date of enactment of this Act.

AMENDMENT NO. 904

(Purpose: To declare certain areas in Seward, Alaska, as nonnavigable waters of the United States for purposes of navigational servitude)

At the end of title III, add the following:

SEC. 3010. SEWARD WATERFRONT, SEWARD, ALASKA.

(a) IN GENERAL.—The parcel of land included in the Seward Harbor, Alaska navigation project identified as Tract H, Seward Original Townsite, Waterfront Park Replat, Plat No 2012-4, Seward Recording District, shall not be subject to the navigation servitude (as of the date of enactment of this Act).

(b) ENTRY BY FEDERAL GOVERNMENT.—The Federal Government may enter upon any portion of the land referred to in subsection (a) to carry out any required operation and maintenance of the general navigation features of the project.

AMENDMENT NO. 884

(Purpose: To require the closure of the Upper St. Anthony Falls Lock and Dam if certain conditions are met)

At the appropriate place, insert the following:

SEC. _____. UPPER MISSISSIPPI RIVER PROTECTION.

(a) DEFINITION OF UPPER ST. ANTHONY FALLS LOCK AND DAM.—In this section, the term ''Upper St. Anthony Falls Lock and Dam'' means the lock and dam located on Mississippi River mile 853.9 in Minneapolis, Minnesota.

(b) ECONOMIC IMPACT STUDY.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress a report regarding the impact of closing the Upper St. Anthony Falls Lock and Dam on the economic and environmental well-being of the State of Minnesota.

(c) MANDATORY CLOSURE.—Notwithstanding subsection (b) and not later than 1 year after the date of enactment of this Act, the Secretary shall close the Upper St. Anthony Falls Lock and Dam if the Secretary determines that the annual average tonnage moving through the Upper St. Anthony Falls Lock and Dam for the preceding 5 years is not more than 1,500,000 tons.

(d) EMERGENCY OPERATIONS.—Nothing in this section prevents the Secretary from carrying out emergency lock operations necessary to mitigate flood damage.

AMENDMENT NO. 870, AS MODIFIED

(Purpose: To modify a provision relating to Harbor Maintenance Trust Fund prioritization)

Beginning on page 299, strike line 9 and all that follows through page 301, line 16, and insert the following:

''(D) LOW-USE PORT.—The term 'low-use port' means a port at which not more than 1,000,000 tons of cargo are transported each calendar year.

''(E) MODERATE-USE PORT.—The term 'moderate-use port' means a port at which more than 1,000,000, but fewer than 10,000,000, tons of cargo are transported each calendar year.

''(2) PRIORITY.—Of the amounts made available under this section to carry out projects described in subsection (a)(2) that are in excess of the amounts made available to carry out those projects in fiscal year 2012, the Secretary of the Army, acting through the Chief of Engineers, shall give priority to those projects in the following order:

''(A)(i) In any fiscal year in which all projects subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation) are not maintained to their constructed width and depth, the Secretary shall prioritize amounts made available under this section for those projects that are high-use deep draft and are a priority for navigation in the Great Lakes Navigation System.

''(ii) Of the amounts made available under clause (i)—

''(I) 80 percent shall be used for projects that are high-use deep draft; and

''(II) 20 percent shall be used for projects that are a priority for navigation in the Great Lakes Navigation System.

''(B) In any fiscal year in which all projects identified as high-use deep draft are maintained to their constructed width and depth, the Secretary shall—

''(i) equally divide among each of the districts of the Corps of Engineers in which eligible projects are located 10 percent of remaining amounts made available under this section for moderate-use and low-use port projects—

''(I) that have been maintained at less than their constructed width and depth due to insufficient federal funding during the preceding 6 fiscal years; and

''(II) for which significant State and local investments in infrastructure have been made at those projects during the preceding 6 fiscal years; and

''(ii) prioritize any remaining amounts made available under this section for those projects that are not maintained to the minimum width and depth necessary to provide sufficient clearance for fully loaded commercial vessels using those projects to maneuver safely.

''(3) ADMINISTRATION.—For purposes of this subsection, State and local investments in infrastructure shall include infrastructure investments made using amounts made available for activities under section 105(a)(9) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(9)).

''(4) EXCEPTIONS.—The Secretary may prioritize a project not identified in paragraph (2) if the Secretary determines that funding for the project is necessary to address—

''(A) hazardous navigation conditions; or

''(B) impacts of natural disasters, including storms and droughts.

''(5) REPORTS TO CONGRESS.—Not later than September 30, 2013, and annually thereafter, the Secretary shall submit to Congress a report that describes, with respect to the preceding fiscal year—

''(A) the amount of funds used to maintain high-use deep draft projects and projects at moderate-use ports and low-use ports to the constructed depth and width of the projects;

''(B) the respective percentage of total funds provided under this section used for high use deep draft projects and projects at moderate-use ports and low-use ports;

''(C) the remaining amount of funds made available to carry out this section, if any; and

''(D) any additional amounts needed to maintain the high-use deep draft projects and projects at moderate-use ports and low-use ports to the constructed depth and width of the projects.''.

AMENDMENT NO. 911, AS MODIFIED

(Purpose: To provide Crediting Authority for Federally Authorized Navigation Projects)

At the appropriate place, insert:

Crediting Authority for Federally Authorized Navigation Projects

SEC. ____. A non-Federal interest for a navigation project may carry out operation maintenance activities for that project subject to all applicable requirements that would apply to the Secretary carrying out such operations and maintenance, and may receive credit for the costs incurred by the non-Federal interest in carrying out such activities towards that non-Federal interest's share of construction costs for a federally authorized element of the same project or another federally authorized navigation project, except that in no instance may such credit exceed 20 percent of the costs associated with construction of the general navigation features of the project for which such credit may be received pursuant to this section.

AMENDMENT NO. 882

(Purpose: To modify the allocation of funds to the Susquehanna River Basin Commission, Delaware River Basin Commission, and the Interstate Commission on the Potomac River Basin to fulfill equitable funding requirements of the respective interstate compacts of the Commissions)

On page 190, after line 23, add the following:

SEC. 20____. RIVER BASIN COMMISSIONS.

Section 5019 of the Water Resources Development Act of 2007 (121 Stat. 1201) is amended by striking subsection (b) and inserting the following:

''(b) AUTHORIZATION TO ALLOCATE.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall allocate funds from the General Expenses account of the civil works program of the Army Corps of Engineers to the Susquehanna River Basin Commission, Delaware River Basin Commission, and the Interstate Commission on the Potomac River Basin to fulfill the equitable funding requirements of the respective interstate compacts on an annual basis and in amounts equal to the amount determined by Commission in accordance with the respective interstate compact.

''(2) LIMITATION.—Not more than 1.5 percent of funds from the General Expenses account of the civil works program of the Army Corps of Engineers may be allocated in carrying out paragraph (1) for any fiscal year.

''(3) REPORT.—For any fiscal year in which funds are not allocated in accordance with paragraph (1), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

''(A) the reasons why the Corps of Engineers chose not to allocate funds in accordance with that paragraph; and

''(B) the impact of the decision not to allocate funds on water supply allocation, water quality protection, regulatory review and permitting, water conservation, watershed planning, drought management, flood loss reduction, and recreation in each area of jurisdiction of the respective Commission.''.

AMENDMENT NO. 903, AS MODIFIED

(Purpose: To authorize the Secretary to enter into deep draft port development partnerships)

On page 243, between lines 18 and 19, insert the following:

SEC. 5017. ARCTIC DEEP DRAFT PORT DEVELOPMENT PARTNERSHIPS.

(a) IN GENERAL.—The Secretary may provide technical assistance, including planning, design, and construction assistance, to non-Federal public entities, including Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), for the development, construction, operation, and maintenance of channels, harbors, and related infrastructure associated with deep draft ports for purposes of dealing with Arctic development and security needs.

(b) ACCEPTANCE OF FUNDS.—The Secretary is authorized to accept and expend funds provided by non-Federal public entities, including Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), to carry out the activities described in subsection (a).

(c) LIMITATION.—No assistance may be provided under this section until after the date on which the entity to which that assistance is to be provided enters into a written agreement with the Secretary that includes such terms and conditions as the Secretary determines to be appropriate and in the public interest.

(d) PRIORITIZATION.—The Secretary shall prioritize Arctic deep draft ports identified by the Army Corps, The Department of Homeland Security and the Department of Defense.

AMENDMENT NO. 906, AS MODIFIED

(Purpose: To provide for a severe flooding and drought management study of the greater Mississippi River Basin)

At the end of title V, add the following:

SEC. 5_____. GREATER MISSISSIPPI RIVER BASIN SEVERE FLOODING AND DROUGHT MANAGEMENT STUDY.

(a) DEFINITIONS.—In this section:

(1) GREATER MISSISSIPPI RIVER BASIN.—The term ''greater Mississippi River Basin'' means the area covered by hydrologic units 5, 6, 7, 8, 10, and 11, as identified by the United States Geological Survey as of the date of enactment of this Act.

(2) LOWER MISSISSIPPI RIVER.—The term ''lower Mississippi River'' means the portion of the Mississippi River that begins at the confluence of the Ohio River and flows to the Gulf of Mexico.

(3) MIDDLE MISSISSIPPI RIVER.—The term ''middle Mississippi River'' means the portion of the Mississippi River that begins at the confluence of the Missouri River and flows to the lower Mississippi River.

(4) SEVERE FLOODING AND DROUGHT.—The term ''severe flooding and drought'' means severe weather events that threaten personal safety, property, and navigation on the inland waterways of the United States.

(b) IN GENERAL.—The Secretary shall carry out a study of the greater Mississippi River Basin—

(1) to improve the coordinated and comprehensive management of water resource projects in the greater Mississippi River Basin relating to severe flooding and drought conditions; and

(2) to evaluate the feasibility of any modifications to those water resource projects, consistent with the authorized purposes of those projects, and develop new water resource projects to improve the reliability of navigation and more effectively reduce flood risk.

(c) CONTENTS.—The study shall—

(1) identify any Federal actions that are likely to prevent and mitigate the impacts of severe flooding and drought, including changes to authorized channel dimensions, operational procedures of locks and dams, and reservoir management within the greater Mississippi River Basin, consistent with the authorized purposes of the water resource projects;

(2) identify and make recommendations to remedy challenges to the Corps of Engineers presented by severe flooding and drought, including river access, in carrying out its mission to maintain safe, reliable navigation, consistent with the authorized purposes of the water resource projects in the greater Mississippi River Basin; and

(3) identify and locate natural or other physical impediments along the middle and lower Mississippi River to maintaining navigation on the middle and lower Mississippi River during periods of low water.

(d) CONSULTATION AND USE OF EXISTING DATA.—In carrying out the study, the Secretary shall—

(1) consult with appropriate committees of Congress, Federal, State, tribal, and local agencies, environmental interests, agricultural interests, recreational interests, river navigation industry representatives, other shipping and business interests, organized labor, and nongovernmental organizations;

(2) to the maximum extent practicable, use data in existence as of the date of enactment of this Act; and

(3) incorporate lessons learned and best practices developed as a result of past severe flooding and drought events, including major floods and the successful effort to maintain navigation during the near historic low water levels on the Mississippi River during the winter of 2012–2013.

(e) COST-SHARING.—The Federal share of the cost of carrying out the study under this section shall be 100 percent.

(f) REPORT.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the study carried out under this section.

(g) SAVINGS CLAUSE.—Nothing in this section impacts the operations and maintenance of the Missouri River Mainstem System, as authorized by the Act of December 22, 1944 (58 Stat. 897, chapter 665).

AMENDMENT NO. 893

(Purpose: To provide for the policy relating to the Harbor Maintenance Trust Fund prioritization)

On page 297, between lines 19 and 20, insert the following:

(a) POLICY.—It is the policy of the United States that the primary use of the Harbor Maintenance Trust Fund is for maintaining the constructed widths and depths of the commercial ports and harbors of the United States, and those functions should be given first consideration in the budgeting of Harbor Maintenance Trust Fund allocations.

AMENDMENT NO. 898

(Purpose: To provide for the reopening of the Cape Arundel Disposal Site as a dredged material disposal site)

At the end of title V, add the following:

SEC. 50_____. CAPE ARUNDEL DISPOSAL SITE, MAINE.

(a) IN GENERAL.—The Secretary, in concurrence with the Administrator of the Environmental Protection Agency, is authorized to reopen the Cape Arundel Disposal Site selected by the Department of the Army as an alternative dredged material disposal site under section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(b)) (referred to in this section as the ''Site'').

(b) DEADLINE.—The Site may remain open under subsection (a) until the earlier of—

(1) the date on which the Site does not have any remaining disposal capacity;

(2) the date on which an environmental impact statement designating an alternative dredged material disposal site for southern Maine has been completed; or

(3) the date that is 5 years after the date of enactment of this Act.

(c) LIMITATIONS.—The use of the Site as a dredged material disposal site under subsection (a) shall be subject to the conditions that—

(1) conditions at the Site remain suitable for the continued use of the Site as a dredged material disposal site; and

(2) the Site not be used for the disposal of more than 80,000 cubic yards from any single dredging project.

AMENDMENT NO. 861 AS MODIFIED

(Purpose: To improve a provision relating to project acceleration)

On page 121, strike lines 1 through 3, and insert the following:

''(II) conflict with the ability of a cooperating agency to carry out applicable Federal laws (including regulations).

On page 138, between lines 3 and 4, insert the following:

''(q) AUTHORIZATION.—The authority provided by this section expires on the date that is 10 years after the date of enactment of this Act.

AMENDMENT NO. 907

(Purpose: To provide for future project authorizations)

At the end of title I insert the following:

SEC. 2_____. FUTURE PROJECT AUTHORIZATIONS.

(a) POLICY.—The benefits of water resource projects designed and carried out in an economically justifiable, environmentally acceptable, and technically sound manner are important to the economy and environment of the United States and recommendations to Congress regarding those projects should be expedited for approval in a timely manner.

(b) APPLICABILITY.—The procedures under this section apply to projects for water resources development, conservation, and other purposes, subject to the conditions that—

(1) each project is carried out—

(A) substantially in accordance with the plan identified in the report of the Chief of Engineers for the project; and

(B) subject to any conditions described in the report for the project; and

(2)(A) a report of the Chief of Engineers has been completed; and

(B) after the date of enactment of this Act, the Assistant Secretary of the Army for Civil Works has submitted to Congress a recommendation to authorize construction of the project.

(c) EXPEDITED CONSIDERATION.—

(1) IN GENERAL.—A bill shall be eligible for expedited consideration in accordance with this subsection if the bill—

(A) authorizes a project that meets the requirements described in subsection (b); and

(B) is referred to the Committee on Environment and Public Works of the Senate.

(2) COMMITTEE CONSIDERATION.—

(A) IN GENERAL.—Not later than January 31st of the second session of each Congress, the Committee on Environment and Public Works of the Senate shall—

(i) report all bills that meet the requirements of paragraph (1); or

(ii) introduce and report a measure to authorize any project that meets the requirements described in subsection (b).

(B) FAILURE TO ACT.—Subject to subparagraph (C), if the Committee fails to act on a bill that meets the requirements of paragraph (1) by the date specified in subparagraph (A), the bill shall be discharged from the Committee and placed on the calendar of the Senate.

(C) EXCEPTIONS.—Subparagraph (B) shall not apply if—

(i) in the 180-day period immediately preceding the date specified in subparagraph (A), the full Committee holds a legislative hearing on a bill to authorize all projects that meet the requirements described in subsection (b);

(ii)(I) the Committee favorably reports a bill to authorize all projects that meet the requirements described in subsection (b); and

(II) the bill described in subclause (I) is placed on the calendar of the Senate; or

(iii) a bill that meets the requirements of paragraph (1) is referred to the Committee not earlier than 30 days before the date specified in subparagraph (A).

(d) TERMINATION.—The procedures for expedited consideration under this section terminate on December 31, 2018.

AMENDMENT NO. 896

(Purpose: To require the Government Accountability Office to carry out a study evaluating the effectiveness of activities funded by the Harbor Maintenance Trust Fund in maximizing economic growth and job creation in port communities)

At the end of title VIII, add the following:

SEC. 8_____. HARBOR MAINTENANCE TRUST FUND STUDY.

(a) DEFINITIONS.—In this section:

(1) LOW-USE PORT.—The term ''low-use port'' means a port at which not more than 1,000,000 tons of cargo are transported each calendar year.

(2) MODERATE-USE PORT.—The term ''moderate-use port'' means a port at which more than 1,000,000, but fewer than 10,000,000, tons of cargo are transported each calendar year.

(b) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall carry out a study and submit to Congress a report that—

(1) evaluates the effectiveness of activities funded by the Harbor Maintenance Trust Fund in maximizing economic growth and job creation in the communities surrounding low- and moderate-use ports; and

(2) includes recommendations relating to the use of amounts in the Harbor Maintenance Trust Fund to increase the competitiveness of United States ports relative to Canadian and Mexican ports.

Mrs. BOXER. Mr. President, it is my understanding—and I ask the floor staff to correct me—is it so that we just now passed the first number of amendments that don't require votes? Was that just done in the unanimous consent? Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mrs. BOXER. I am very pleased with that. We had about 15 of these amendments—quite bipartisan. Half of the amendments were Democratic and half Republican, so that is good.

Now what we are going to do is take up the amendments that require votes. It is my understanding that Senator VITTER wants to speak on the Barrasso amendment, which is fine.

I say to my colleagues through the Chair that they now have approximately 2 hours to come down and make the case on their votes. Senators INHOFE, BARRASSO, SANDERS, COBURN, BOOZMAN, MERKLEY, UDALL, and HOEVEN is where we are. If they wish to be heard, then it is time to come over and be heard.

At this time, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, first of all, let me thank my colleague from California, the chair, and all of my colleagues for allowing us to move forward with a very open amendment process. It is not quite as open a process as I would have wanted—namely on the Landrieu amendment because of the objection from my colleague from Pennsylvania. By any Senate standard, this has been a very open amendment process, and that is very healthy.

I join the chair in urging all of our colleagues who would like to debate upcoming votes to come to the floor now. The time is between now and 5 p.m. Please come to the floor. I am doing that right now. I want to talk about one of those amendments on which we will vote, the Barrasso amendment, which is about waters of the United States. This is an important issue.

JOHN BARRASSO and I and many others believe the EPA should not be able to define and expand its regulatory jurisdiction—in this case, we are talking about the Clean Water Act—without undertaking a formal rulemaking process that provides individuals, businesses, and other stakeholders the opportunity to give meaningful input.

The Clean Water Act authorizes the EPA to regulate the discharge of pollutants into ''navigable waters.'' Again, that is a very clear term—''navigable waters.'' The act defines ''navigable waters'' as ''the waters of the United States, including the territorial seas.'' The trouble is clearly understanding what constitutes the waters of the United States. For decades, courts have considered the meaning of ''the waters of the United States,'' and yet uncertainty still remains.

Recently, in 2006—about 7 years ago—in the Rapanos decision, the Supreme Court considered whether the Army Corps of Engineers properly determined the wetlands in Michigan as being waters of the United States. Although the Court determined that the corps viewed its regulatory authority under the Clean Water Act too broadly, a majority of the Justices still could not come to a precise agreement into exactly what ''waters of the United States'' means. So they agreed about what it didn't mean in the context of that case—that the corps had gone too far afield—but they didn't clearly agree on exactly what it meant.

More recently, Justice Alito, in the Sackett case, observed that the reach of the Clean Water Act remains ''notoriously unclear.'' Justice Alito and others have called on Congress to examine the Clean Water Act statutory language to make it precise and clear up the confusion. He also noted that EPA ''has not seen fit to promulgate a rule providing a clear and sufficiently limited definition of the phrase''—that phrase being ''the waters of the United States.''

Instead, the EPA has done something different. Unfortunately, this is a trend at the EPA. The EPA issued what it calls guidance on this issue. Now, according to the EPA, the guidance ''clarifies how the EPA and Corps understand existing requirements of the Clean Water Act and the agencies' implementing regulations'' in light of relevant decisions.

The problem is this: Guidance is short of what the EPA should do, which is to promulgate rules and regs. It is short of that for a very particular reason—because there is no clear-cut, nailed-down process for guidance. The EPA can just make up what it wants without having to take input from affected parties. Under the law, there are clear-cut guidelines and rules for promulgating rules and regulations, and that is what the EPA should do.

In this instance, there are two problems. First of all, the guidance is simply mistaken. It is way too expansive, in the view of many folks, including myself and the author of this amendment, Senator BARRASSO. Also, very importantly, guidance doesn't have to go through a process. Guidance doesn't illicit input from citizens, impacted parties, and stakeholders. That is another crucial issue involved.

This Barrasso amendment would clear up that point on two fronts. It would go to the substance of the guidance—and we think EPA is getting it wrong with regard to that substance—but it would also help underscore that there is a process for the EPA to issue rules and regulations, and that is what the EPA should be doing on important matters such as this—not shortcutting, circumventing that process by simply issuing guidance.

So if the EPA wishes to examine the meaning of ''waters of the United States'' in the Clean Water Act, it needs to do so in a fair and transparent manner, and in a way that provides all Americans the chance to offer meaningful regulatory input. Guidance doesn't do that. This guidance gets it wrong. But, just as importantly, guidance doesn't fulfill the need for transparency and openness and the ability to accept input. This Barrasso amendment would provide EPA with precisely that opportunity: Make them accept

input and make them get it right. That is why I strongly support the Barrasso amendment.

Again, I invite all of our colleagues to come down to the floor to debate any part of this bill, any aspect of pending amendments. We are open for business now until 5 p.m. I think that is going to be a lot of time. We will have a series of votes starting today and going into tomorrow, and I very much appreciate the chair of the committee and others who have allowed this very open amendment process on the floor of the Senate.

With that, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BARRASSO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 868

Mr. BARRASSO. Mr. President, I wish to call up amendment No. 868.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. BARRASSO], for himself, Mr. SESSIONS, Mr. VITTER, Mr. CRAPO, Mrs. FISCHER, and Mr. WICKER, proposes an amendment numbered 868.

Mr. BARRASSO. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To preserve existing rights and responsibilities with respect to waters of the United States)

On page 452, between lines 14 and 15, insert the following:

SEC. 2055. IDENTIFICATION OF WATERS PROTECTED BY THE CLEAN WATER ACT.

(a) IN GENERAL.—Neither the Secretary of the Army nor the Administrator of the Environmental Protection Agency shall—

(1) finalize the proposed guidance described in the notice of availability and request for comments entitled ''EPA and Army Corps of Engineers Guidance Regarding Identification of Waters Protected by the Clean Water Act'' (EPA–HQ–OW–2011–0409) (76 Fed. Reg. 24479 (May 2, 2011)); or

(2) use the guidance described in paragraph (1), or any substantially similar guidance, as the basis for any decision regarding the scope of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) or any rulemaking.

(b) RULES.—The use of the guidance described in subsection (a)(1), or any substantially similar guidance, as the basis for any rule shall be grounds for vacation of the rule.

Mr. BARRASSO. Mr. President, this amendment restricts expansion of Federal authority, and it is a Federal authority attempting to encompass all the wet areas of farms, ranches, and suburban homes all across America, so this amendment is designed to restrict that expansion of Federal authority.

Specifically, the amendment eliminates this administration's guidance to implement this expansion of Federal authority. Through proposed guidance—that is the key phrase here, ''guidance''—Federal agencies are preparing to expand the definition of ''waters of the United States.'' I think it would make sense that people would inherently understand what waters of the United States would be. But the Federal Government is preparing to expand the definition to include ditches, including dry areas—other dry areas where water happens to flow and when it only flows even for a short duration after a rainfall. The American people know that should not be considered waters of the United States. Federal regulations have never defined ditches and other upland drainage features as ''waters of the United States.'' But this draft guidance coming out of Washington does do that, and it will have a huge impact on farmers, ranchers, and small businesses that need to put a shovel in the ground to make a living. The EPA and the Army Corps of Engineers' guidance amounts to a Federal user fee for farmers and ranchers to farm the land they own.

Just as troubling as ignoring congressional intent, the guidance absolutely disregards the fundamental tenet embodied in two decisions of the U.S. Supreme Court. One is the SWANCC decision and the other is the Rapanos decision. Those are decisions that say there are actual limits to Federal jurisdiction. It is particularly troubling to me and to others around the country—and certainly at home in Wyoming it is particularly troubling—that the guidance allows the Army Corps of Engineers and the EPA to regulate waters now considered entirely under State jurisdiction. As somebody who has served in the State legislature, talking to the Presiding Officer as someone who has served as a Governor of his State, we know the key importance of State jurisdiction in making local decisions.

This guidance would grant the Environmental Protection Agency and the U.S. Corps of Engineers virtually unlimited—virtually unlimited—regulatory control over all wet areas within a State.

In addition, if this guidance is allowed to go forward—the guidance I am attempting to prevent to protect Americans from today—enormous resources are going to be needed to expand the Clean Water Act Federal regulatory program, which could lead to longer delays, and the delays today are significant. Increased delays in securing permits are going to impede a host of economic activities in Wyoming as well as in all of our other States. Commercial and residential real estate development, agriculture, electric transmission, transportation, and mining will all be affected. These are not sectors of our economy we ever want to deliberately hurt, but we certainly would not want to vote for guidance that would harm these sectors while we are in economic times such as these.

That is why I come to the floor with this amendment. I will be urging a ''yes'' vote on this amendment No. 868 at the appropriate time, to continue with the rights and responsibilities of the States and the private landowners impacting this significant water which is the lifeblood of our States.

Thank you very much. I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I rise now to speak in opposition to the Barrasso amendment No. 868 and to explain why.

Before I talk about why I hope the Senate will defeat this amendment, I wish to thank my colleagues on both sides of the aisle for working so closely with me and with Senator VITTER.

The underlying bill is a very good bill and it protects every State. We look at every State's needs. Whether it is flooding, whether it is preserving fishing, whether it is about ports, whether the ports are inland or coastal, medium, small, or large, we have gone out of our way on both sides of the aisle to accommodate Senators.

I wish to speak about Barrasso amendment No. 868, which will be the first amendment to come before us.

It is an anti-environmental rider. Now, here we go again, again and again and again. There is no reason to bring these anti-environmental riders onto every single piece of legislation that goes through here, but yet that is what we face. So I agreed that we would have a vote on this in the spirit of good faith because it certainly is not germane to this bill. It is not.

It has to do with the Clean Water Act. It does not have to do with the Water Resources Development Act. This Barrasso amendment says the guidance that has been developed by the Army Corps of Engineers and by the Environmental Protection Agency as they get ready for a rulemaking after a Court decision is null and void—without a hearing, without giving the corps a chance to explain their guidance, without giving the EPA a chance to explain their guidance. Without looking at the Court's decision his amendment would say the guidance is blocked because he does not like the guidance.

Well, trust me. I am sure I do not like everything in the guidance either. But let the process go forward. The guidance is necessary so there can be a rulemaking, which is essential. Right now there is nothing but chaos after the Court's ruling. People do not know what the Clean Water Act covers.

So the Army Corps, working with the EPA, has issued some guidance. It is

not the final rule, it is guidance. The Barrasso amendment throws the guidance out, throws it into the garbage can, says it cannot be used. If anything like it is ever used, there can be no rulemaking. The Barrasso amendment stops, therefore, the rulemaking. He may not say it explicitly, but if you cannot use any of the guidance, any of the work that has been done, then you cannot have a rule.

Let me tell you who opposes not having a rule: the business community. The business community opposes it. Everyone opposes it. Everybody wants a rule. The vague restriction will make it impossible to initiate a rulemaking, to define what waters are protected under the Clean Water Act. The Barrasso amendment locks into place the current confusion created in the wake of two Supreme Court decisions. He does it by prohibiting any future update of the Clean Water Act regulations or related guidance.

Industry associations and 30 Republican Senators who are opposed to the guidance developed by the Obama administration have called for a rulemaking. They have called for a rulemaking. The letters were just sent to the EPA last month. What we believe to be absolutely accurate is if you throw out the guidance, if you vote for this Barrasso amendment and you say no guidance that looks anything like this will ever be used, there can be no rulemaking.

For decades the Clean Water Act has provided broad protections for the Nation's waters. The Barrasso amendment stops the corps from restoring these longstanding protections, leaving many waters at risk. Let me tell you what that means. Streams that provide drinking water for up to 117 million Americans may not be covered by the Clean Water Act. That is dangerous for the people because there is all kinds of pollution that gets dumped into these streams. There are 20 million acres of wetlands that provide flood protection and serve as wildlife habitat. There will be no rules governing them because of the way the Barrasso amendment is written.

Any effort to clear up uncertainty that has resulted in delays and confusion and slowed efforts to hold polluters accountable will be null and void, can have no effect. You cannot use the guidance. You have to throw it away. If anything comes forward that remotely resembles it, you have to throw it away. Then you cannot make a rule. This is harmful.

In closing, I want to talk about from what harm we want to protect the people. We know some of the dangerous pollution that gets dumped into our Nation's waters sometimes on purpose, sometimes on accident. But we have chemical pollution and all kinds of industrial pollution. It includes such chemicals as arsenic—very dangerous for people. I will have more to say on the specifics, but we know there is waterborne disease. People get very ill if the drinking water is not good, if the swimming water is not good. The warmer our waters are getting, the more dangerous it is. Certain organisms that live in these warmer waters never existed before.

We had a case in Ohio where a child got deathly ill because the water was so warm it attracted these different kinds of bacteria and organisms. So when I stand here, I speak from the heart. All of us do. But I know we should not vote on something that precludes us from protecting the health and safety and the lives of our people who are the most vulnerable, the children—the children, the pregnant women, the elderly. My goodness, if we are here for any reason, it would certainly be to do no harm to them.

The Barrasso amendment does a lot of harm. It does not belong on the Water Resources Development Act, which is about building projects to protect people using flood control. It is about dredging our waters. It is making sure commerce can move. This is an anti-environmental rider. It does not belong on this bill. It is dangerous for the people.

I urge my colleagues to vote no when the vote comes before us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

INTERNAL REVENUE SERVICE ACTIVITIES

Mr. CORNYN. Mr. President, I see the Senator from Vermont here. I will not be long. I did have a few comments to offer about the unusual developments of the last few days in Washington, DC. Back in 2011 and 2012 my office was contacted by some constituents who were active politically with organizers such as the King Street Patriots, True the Vote, the tea party, particularly in Waco and San Antonio. They were concerned that they were being targeted by the Federal Government, specifically the Internal Revenue Service, for their political activity. They were concerned that the activities of the Internal Revenue Service seemed excessive, unreasonable, and improper. They feared the government officials were targeting them for doing nothing more than exercising their constitutional rights under the First Amendment of the Constitution.

So I did what I think any Senator would do, any Member of Congress: I wrote a letter to the Internal Revenue Service and asked them, first of all, about any indication they had that this was the case. Douglas Shulman, the Commissioner of the Internal Revenue Service, testified later before Congress and categorically denied any type of targeting was, in fact, taking place.

Well, last Friday we learned that my constituents were correct and the Internal Revenue Service was wrong. It turns out the Internal Revenue Service really was targeting American citizens for exercising their most fundamental rights. Even though the Internal Revenue Service did not acknowledge this until last Friday, the Associated Press has reported that senior agency officials learned about the abuses as early as June 2011, nearly 2 years ago.

Let me be clear. These abuses are not simply inappropriate, they are a breach of faith with the American people. They are potentially violations of our criminal law.

Now, as my friend from Vermont knows, if the IRS, if the government can target conservative groups such as the King Street Patriots and the tea party, they can target anybody anywhere across the political spectrum. That is why you are seeing such bipartisan outrage over this news. But not only was the IRS targeting tea party groups, they targeted other people based on their advocacy of restoring the Federal Government to its basic constitutional framework, people concerned about government spending. Meanwhile, there is evidence that the IRS also in some cases targeted Jewish organizations as well. I would hope we would all on a bipartisan basis rise and say this is unacceptable and it is immoral. It is the kind of behavior we associate not with the greatest democracy in the world but with corrupt tinpot dictators.

President Obama has said, to his credit, that all guilty parties will be held fully accountable. Well, I wish I could take some comfort from the President's comments. Unfortunately, the administration has repeatedly stonewalled and misled U.S. officials investigating programs like the Fast and Furious gunwalking scandal and the 2012 attacks in Benghazi, Libya.

The President of the United States got four Pinocchios today from the Fact Checker in the Washington Post. That has to be a first. So why should we expect the Internal Revenue Service investigation to be any different? Unfortunately, this administration has shown a tendency to put politics ahead of the rule of law too many times.

For example, during the government-run Chrysler bankruptcy process, the company-secured bondholders received much less for their loans than did the United Auto Workers Pension Fund, a favorite of the Obama administration. As Solyndra was going bankrupt, the administration violated the law by making taxpayers subordinate to private lenders. So the taxpayers got gored first before private lenders were at risk.

Last year the administration made unconstitutional recess appointments to the National Labor Relations Board and to the Consumer Financial Protection Bureau. Last year the administration illegally waived key requirements of the 1996 welfare reform law.

Finally, to help implement ObamaCare, the IRS has announced that it will violate the text of the law and issue health insurance subsidies through Federal exchanges, something Congress did not authorize. The law clearly states that these subsidies are not available to the Federal exchange but to the State-based exchanges. Indeed, it is the case that the President's

health care law will dramatically expand the power of the Internal Revenue Service because the agency is responsible for implementing so much of ObamaCare's most important provisions.

Well, given what we have learned about IRS malfeasance, does it really sound like a good idea to give them more responsibility, to hire more agents? Before we get to the bottom of the present scandal, do we really want the IRS to administer a law that will affect one-sixth of our economy, as ObamaCare will?

Do we really want the Internal Revenue Service agents collecting so much personal information about millions of American citizens? Remember, even before ObamaCare became the law, the IRS had more than enough power to destroy the lives of individual Americans. Chief Justice John Marshall, at the very beginning of our country, the Chief Justice of the Supreme Court of the United States said the power to tax involves the power to destroy, and those words are still true today. With trust in the Federal Government already at an all-time low, the IRS scandal will further diminish public confidence in public institutions and in Washington, DC.

As a result, this scandal will make it much harder for us to work together to adopt a fiscal policy and economic reforms that our country so desperately needs. When the IRS starts behaving as a rogue agent that considers itself above the law, we have entered truly dangerous territory. Today I am going to join others of my colleagues to call on the Acting IRS Commissioner Steven Miller to resign. If it is true what currently appears to be true, that Mr. Miller willfully misled Congress when inquiries were made earlier about this political activity, he should resign today.

Furthermore, I am encouraged actually by Chairman MAX BAUCUS of the Senate Finance Committee and Senator ORRIN HATCH who said they believe it is important for the Finance Committee as the appropriate standing committee of the Senate with jurisdiction over the Internal Revenue Service to conduct an investigation.

I hope the first witness they will call is Treasury Secretary Jack Lew, who is the boss of the IRS, or overseer of the IRS, Mr. Miller's direct reporting boss. I look forward to a thorough bipartisan investigation that will deliver justice to these government officials who betrayed the American people in such a shameful and egregious manner.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 889

Mr. SANDERS. Mr. President, I call up amendment No. 889.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. SANDERS], for himself and Mr. LEAHY, proposes an amendment numbered 889.

Mr. SANDERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To address restoration of certain properties impacted by natural disasters, and for other purposes)

At the appropriate place, insert the following:

SEC. _____. RESTORATION OF CERTAIN PROPERTIES IMPACTED BY NATURAL DISASTERS.

For all major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act on or after August 27, 2011, the Corps of Engineers and the Federal Emergency Management Agency shall consider eligible the costs necessary to comply with any State stream or river alteration permit required for the repair or replacement of otherwise eligible damaged infrastructure, such as culverts and bridges, including any design standards required to be met as a condition of permit issuance.

Mr. SANDERS. Mr. President, this amendment is cosponsored by my colleague from Vermont, Mr. LEAHY. What it does is it addresses a very serious problem facing the State of Vermont and I think potentially States all over the country.

Mr. President, as you well know, Tropical Storm Irene impacted some 225 Vermont communities with 90 bridges and 963 culverts damaged or destroyed statewide. In a small State, that is a lot of damage.

Long before Irene, the Vermont State legislature enacted stream alteration standards that prevented flood hazards, damage to fish and wildlife, and damage to adjacent property owners. These standards result in resilient infrastructure and are looked to as a model by other States. In other words, what the State legislature did appropriately is pass standards that would do the job, that would protect communities in times of floods and natural disasters.

As we all know, FEMA compensates communities for the rebuilding of bridges and culverts damaged during large storms such as Irene, but FEMA—and here is the main point—in many cases is insisting on overriding Vermont's stronger standards, requiring communities to build inferior projects that are unlikely to withstand the next major storm to hit the State. In other words, communities are standing there wanting to do the right thing. The State has promulgated regulations as to what these culverts and bridges should look like. What FEMA is saying is we are not going to compensate you for doing the right thing. In other words, FEMA is insisting that local communities, in order to get reimbursed for these expenses of replacing damaged infrastructure, must build culverts and bridges to standards that have already failed and are likely to fail again. This is Vermont's problem today. It could be your State's problem tomorrow. The point here is we should not be rebuilding culverts and bridges in a way that will result in them failing once again when another flood or extreme weather disturbance takes place. That makes no sense at all.

In Vermont, at least 39 bridge and culvert projects would benefit from this amendment, and half of these projects have not yet gone forward because of this dispute with FEMA. In other words, we have many communities in the State of Vermont that are not going forward rebuilding the damaged culverts and bridges but waiting because of this ongoing dispute with FEMA.

Again, today this is Vermont's problem. Tomorrow it could be West Virginia's or California's. It makes no sense to rebuild bridges and culverts in a way that has failed. We want to rebuild them in a way that will enable them to remain strong during the next flood or extreme weather disturbance. If another Hurricane Irene were to hit, those towns would be vulnerable to severe damage yet again. In other words, they are sitting in limbo. They don't have the money to do the job they want to see done, and they are not getting help from FEMA. In fact, communities in States across the country that adopt more resilient standards for infrastructure replacement would benefit from this amendment.

Today it impacts Vermont. Tomorrow it could impact any State in this country. Local communities and States have a better sense of the kinds of standards that are required for bridges and culverts than FEMA, and they should be allowed to go forward with those standards and be compensated by FEMA.

FEMA's current practice throws good money at bad by preventing States and local communities from rebuilding with more resilient, better-defined infrastructure after devastating storms. The amendment Senator LEAHY and I are offering will save taxpayers money, will save lives, and better protect communities from future natural disasters and extreme weather disturbances.

In short, the Sanders-Leahy flood resilience amendment requires FEMA to recognize State standards when providing Federal reimbursements for bridge and culvert replacements after natural disasters, supports communities that want to rebuild more resilient infrastructure after natural disasters, harmonizes the approaches of the Army Corps of Engineers and FEMA, and stops throwing good money after bad, saves taxpayers at the local, State, and Federal level by making smarter investments in more durable infrastructure.

With that, I would ask my colleagues to support this amendment.

I ask unanimous consent that the time during all quorum calls be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANDERS. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARDIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 868

Mr. CARDIN. Mr. President, first let me thank Senator BOXER and Senator VITTER for the incredible work they have done in bringing forward the Water Resources Development Act, the WRDA legislation. This truly has been a bipartisan effort to bring forward an extremely important bill for our economy, for jobs, for infrastructure, and for competitiveness. I can speak for the citizens of Maryland as to how important this legislation is to the economic life of our State in maintaining the shipping channels that are critical to the ports in our State, the Port of Baltimore. This legislation will provide the wherewithal for Maryland and our Nation to remain competitive.

In this environment, it is not easy to get a major bill to the finish line. It looks as though as a result of the work done by the chairman and the ranking Republican member, we are on the verge of being able to move this bill forward.

I know we are going to have a few votes in a few moments, and I wanted to take this time to urge my colleagues to reject the Barrasso amendment that would deny the regulation of a lot of the waterways in our country. For 40 years the Clean Water Act dramatically improved the health of a generation of Americans. Without this law, which for decades had protected rivers, streams, wetlands, lakes, and coastal waterways from toxic pollution, all of our Nation's waters would be less safe to swim in, to fish in, and, especially, to drink.

Mr. President, we are talking about the health of the people of this country—the Clean Water Act. We are talking about the health of our streams which people live next to. We are talking about families depending upon clean safe water when they turn their taps on so they can have water to give their families. We are talking about our environment.

I am pretty aggressive on this because I have the honor of representing one of the States that is part of the Chesapeake Bay watershed. The Presiding Officer also represents a State—West Virginia—that is part of the Chesapeake Bay, as is Pennsylvania and Delaware and Virginia and the District of Columbia. My point is there are over 100,000 streams and rivers that feed into the Chesapeake Bay. The Chesapeake Bay is the largest estuary in North America and has thousands of species. The life of the Chesapeake Bay depends upon the waters that flow into it, and the Barrasso amendment would deny the effectiveness of regulating the health of the waters leading into the bay. It would inject into the Clean Water Act a way in which we would be denying the protection of the Clean Water Act to the public.

I urge my colleagues to reject this amendment. It is anti-environment. There is no question about that. But let me cite another reason. I hear my colleagues on both sides of the aisle talk about predictability and we need to know what the rules are. We thought we knew what the rules were on the Clean Water Act, but then the Supreme Court came through with some cases that are, quite frankly, baffling to us because they change the long-standing tradition of the regulations on the Clean Water Act. We thought we understood what it was all about. So there is a great deal of uncertainty today, and the Barrasso amendment takes us back to that uncertainty.

The Obama administration, through its regulatory process, has given us the predictability we need so everyone can plan their activities, knowing full well what the responsibilities are for clean water. I don't think we want to return to that time of uncertainty, and the Barrasso amendment would lead us back down that path.

There are many other reasons why this is wrong to do. When we take a look at how many wetlands and how many streams and brooks we have lost across this country, do we want to turn back the clock on the regulation of clean water on the streams, the brooks, and the wetlands that are involved in our water supply? It is literally because of the protections of the Clean Water Act that we know we are going to have a safe supply of drinking water. It is because of the Clean Water Act we know we can go to our beaches this summer and enjoy the recreational activities along the water. The Barrasso amendment would take us to a point where we could lose the effectiveness of the Clean Water Act in protecting the public health of the people of this Nation.

We have a good bill before us. It is well balanced. I do again applaud the chairman and ranking member. There are provisions in this bill, quite frankly, I would like to see written in a different way, but it was done with full bipartisan cooperation, and so the Barrasso amendment should be rejected by this body, and I urge my colleagues to reject the amendment.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HOEVEN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOEVEN. Mr. President, I rise to speak on legislation in regard to surplus water fees. I call it the States Water Rights Act, the States water rights legislation, and I introduced this legislation as an amendment to the Water Resources Development Act. Essentially what it does is it would prevent the Corps of Engineers from unlawfully and unfairly imposing water usage fees on the Missouri River States. Joining me in this bipartisan legislation is Senator JOHN THUNE of South Dakota, Senator HEIDI HEITKAMP of North Dakota, Senator MAX BAUCUS of Montana, and also Senator TIM JOHNSON of South Dakota. It is bipartisan legislation. In fact, I expect Senator THUNE will be joining me here on the floor very shortly, and also Senator HEITKAMP, so we can engage in a colloquy in regard to the legislation.

The Missouri River, of course, flows through the State of North Dakota and the other Missouri River States. We have seven States the Missouri River flows through. In 1944, through the Pick-Sloan Act, waters in those States were dammed to create large-scale reservoirs. There are six mainstream reservoirs. Of course the primary purpose for the dams and reservoirs was to provide flood protection downstream, which we have been doing now for more than 50 years—actually, over 60 years.

At the same time, just as we are providing that flood protection with these reservoirs, at the same time the upper basin States, States throughout the basin, have withdrawn water from those reservoirs for a whole variety of uses—municipalities, tribes, business and industrial—the whole gamut of uses. In all that time, more than 60 years, the Corps of Engineers has never charged the respective States—Montana, North Dakota, South Dakota, Nebraska—any of them—has not charged them for using the water. That makes sense because if they draw the water out of the river—I mean every one of the States has water rights. Tribes have water rights. If they draw the water out of the river, of course, there is no charge.

Likewise, because the States gave up the land for flood protection in order to create those reservoirs, the corps has never charged for drawing water out of the reservoirs either.

That has changed now. Now the corps is saying we are undertaking a study and in our study we are going to look and decide whether we are going to charge a fee if you take water out of the reservoir; even though we never have, now we think maybe we are going to charge a fee.

This amendment blocks that. It says you can't do that. The States have water rights. Just as if you take it out of the river you can't charge us for that water, you certainly can't flood our land and then charge us for it. It doesn't make any sense.

Furthermore, because States have water rights, they would never be able to do it. If in fact the corps were to proceed and impose those fees, we would sue them and we would win under the law because the respective States are entitled to those water rights. That makes this kind of an unusual situation.

We have put this legislation forward, frankly, to avoid the cost of litigation,

the cost to the respective States and the cost to the Federal Government. So the reality is without this legislation we are offering, it would actually cost the Federal Government money because they would have to undertake litigation against the States to impose fees on the States in violation of their water rights which are well established at law. This amendment, in fact, in actuality saves the Federal Government money.

But the CBO, under their scoring regime, says no, wait a minute. Somehow we are going to look beyond that. I guess they would pretend that wouldn't really happen. So we are going to assign a cost to this legislation because the corps might get some fees down the road somewhere; in spite of all these things, they might get a fee. So they have assigned a $5 million cost to the legislation over the 10-year scoring window; $5 million over the 10-year scoring window.

We have managed to address that by saying no, we have also added—in addition to the fact that under this legislation the corps can't impose the fees, we have also said you have to find $5 million in savings over the next 10 years out of your operating budget. Since just their operations alone are $2 billion a year, obviously that would be a very simple matter. The fact is it is, frankly, a technicality anyway because they are offsetting money they are never going to get so there is no cost to it. But from an accounting standpoint we do that so the CBO does not assign any score to this legislation.

That is kind of some of the nuts and bolts of the legislation. But the key is this: This is about States that have given up fertile farmland, hundreds of thousands of acres, in order to provide flood protection for other States farther downstream. They were able to not only use the land but they were able to draw water from the river as they wanted to without being charged. So here comes the corps and says now that we have flooded your land, now that you have provided that flood protection, oh, golly, we are going to charge you for flooding your land. We are going to charge small towns, we are going to charge tribes, we are going to charge business and industries, farmers—whomever.

It absolutely makes no sense. That is what this act does. It addresses that and makes sure they do not impose those fees in clear violation of States' water rights. In fact, the legislation, even though scored by CBO as having no cost, will save not only the Federal Government money but the respective States money as well.

I am very pleased to note that my distinguished colleague from South Dakota, Senator JOHN THUNE, is here. I wish to ask if he, as cosponsor of this legislation, would express some of his thoughts as well.

Mr. THUNE. I ask the Senator from North Dakota if he will yield for a question?

Mr. HOEVEN. Yes.

Mr. THUNE. This is an issue that is important to both his State and my State for many reasons, not the least of which is we have basically flooded 1.6 million acres of prime bottom land, some of the richest agricultural land in our States, in order to prevent flooding downstream. Then of course there were also stated other various uses of the water that would be allowed for the States that were impacted when this occurred.

But I wonder if my colleague from North Dakota—he has already touched upon many of the reasons why this should not happen, but he is a former Governor of his State. I know our Governor and our attorney general have made it abundantly clear that if the corps moves forward, they intend to file a lawsuit and they will litigate this. As a former Governor, if the now-Senator from North Dakota could respond to how his State of North Dakota might act in the event this actually were implemented by the corps?

It strikes me at least that this is without precedent. This is something that—the Flood Control Act was passed in 1944 and the dams were built subsequent to that. For the past 50 years our States have had access to this water and it is something that is a State right. There is no legal or statutory—there is no historical precedent for doing this. I am wondering how the former Governor of North Dakota might view this as a Governor, as to what his action might be in the event the Corps of Engineers were to move forward with this. Because it certainly would impact a lot of the industrial users, water users in the State, businesses, tribes—a lot of folks are going to be impacted if the corps moves forward with this proposal. If the Senator from North Dakota might tell me as former Governor how he might view this and what he would intend to do and what our Governor and attorney general would intend to do in the event the corps moves forward.

Mr. HOEVEN. I thank the distinguished Senator from South Dakota for joining me, and for his question. Of course, he is anticipating exactly what would happen. The States will initiate litigation against the corps if in fact the corps decides to impose a fee. They are undertaking a year-long study and at the end they are going to come back and say: Oh, they are not going to charge a fee. Or they are not going to impose a fee. If they do impose a fee, here is what it would be. At that point they would be sued by the States. In fact, in the case of North Dakota, the legislature has already set aside moneys to fund the lawsuit.

As when I was the Governor, the current Governor and the attorney general have already said very clearly they will commence litigation. It would be multistate litigation. As I said, they have already set aside funds.

That is the point I am making. We can talk about the CBO score—which we have now squared away so it doesn't score—the reality is we are saving both the Federal Government and the States money with this legislation because there will absolutely be litigation.

Mr. THUNE. Will the Senator yield for another question, if I might?

Mr. HOEVEN. I will.

Mr. THUNE. Our attorney general wrote a letter and said:

> This proposal, whether disguised as a reallocation or surplus water, exceeds the Corps' regulatory authority and violates basic principles of federalism.

It went on to lay out the reasons why they, our State, would obviously enter into litigation if it comes to that, if it is necessary in order to protect the rights of South Dakotans to the water that is rightfully theirs.

I would be interested in knowing as well from the Senator from North Dakota if in fact, during the course of the last many years, his amendment would change anything, if his amendment would change anything that is happening today? In other words, today what happens if the State wants to use water in one of the mainstream dams—and there are six mainstream dams, one in Montana, a big one in North Dakota, and then we have four in South Dakota, all of which were created by the Flood Control Act or authorized. These were dams built to protect from flooding downstream and then also authorized various uses of that water.

I might point out what some of those uses are. They were to be for enhanced navigation, cheap hydro power, irrigation, programs to increase public recreation facilities, municipal-industrial water supplies, and fish and wildlife populations. Those are some of the things that are stated that the water is to be used for.

The Senator's amendment, which would prevent the corps from charging for this water, as I understand it, doesn't change anything, the practice as it exists today, because a water user would request an easement from the corps, and then essentially the State would have to issue the water. That is my understanding of how it works today.

Does any of that change—if it is passed—as far as the amendment of the Senator from North Dakota?

Mr. HOEVEN. Mr. President, in response to the Senator's question, absolutely not. It doesn't change any of the authorized purposes for the reservoirs and for the system. This does not impact in any way any of the authorized uses for the mainstem dams, the mainstem breviaries or the Missouri River system.

I want to emphasize that because we have the seven Missouri River States, and sometimes we get the upstream and downstream interests. This does not change any of those authorized purposes or how they are utilized or how the respective States interact with them—or even the amount of water usage.

So to try to bring in any of the other issues which have typically been concerns for the Missouri River does not

apply here. This is about whether the respective States—this is one where we can come together. This is upstream or downstream and whether any States will be charged for water that is rightfully theirs. That makes this very much a States rights issue about which all of the States should be concerned.

How can we allow Federal agencies to come in and simply impose a fee because they want to and then impose whatever fee they want? We will do a study and we will impose a fee of whatever size we determine we believe is appropriate.

It is a clear violation of States rights, and on a very important issue, water rights.

If I could, I want to also invite the good Senator from North Dakota, Ms. HEITKAMP, to join us as well in this colloquy. She also brings expertise as the former attorney general in North Dakota and can certainly comment on the legal issues as well.

Before I do that, I will turn it over, Mr. President, to the Senator from South Dakota, who I think had another question and/or comment.

Mr. THUNE. Mr. President, I want to welcome our other colleague from North Dakota who also has experience as a litigator in protecting the interests of her State. Perhaps she could also comment on what actions the States might take if the corps moves forward.

I want to point out to my colleagues, and perhaps the Senator is already aware of this, but I am looking at some things that are proposed charges that the corps would make under this proposal, although I don't think they have stated explicitly what that might be. But it ends up being a significant amount.

In fact, over the Lewis and Clark leg, which is Gavins Point—or I should say, Lewis and Clark Dam—they are talking about $174 per acre foot of yield from Lewis and Clark Lake. We are talking about businesses, individuals, tribes, and industrial users having access to water they believe—and I think we all believe—is something that was promised to them when this legislation was passed way back in the 1940s.

We have essentially 70 years of precedent where it has been the case that the States have access and can rightfully use that water for those various purposes as authorized under the legislation. This would move away from that and start to impose these fees, which I think over time get to be quite excessive.

I appreciate the work that has been done by the Senator from North Dakota Mr. HOEVEN in terms of trying to get the CBO to evaluate this in the proper context. For a while they were talking about the scoring impact that was much larger than many of us believed it would be. Again, it is a hypothetical situation. It is not happening today.

All the Senator is simply doing is saying we want to keep in place the rules of the game as they have applied to the mainstem dams for the past 50 years—70 years since the authorization in the legislation that created it, but also since the dams were built.

I guess I would say to my colleagues from North Dakota, I appreciate their good work, and I would simply reiterate—as a South Dakotan, downstream from North Dakota—that our States, and all the States in the upper basin, would be dramatically impacted by this because it would be a precedent that would be entirely new.

Literally, this is something we have not dealt with since we had the dams and the lakes in our States. Again, this would be at a tremendous sacrifice in terms of the amount of prime bottom land that was given up when the dams were built and the land was taken.

I now defer to the former attorney general of North Dakota, Senator HEITKAMP, for some observations she might have with respect to that issue.

Mr. HOEVEN. I thank the Senator from South Dakota for joining, and he is absolutely right. The cost to the States is significant. In actuality, the scoring number is reduced because the probability of them getting it is so remote. As I mentioned earlier, they are flying in the face of well-established water rights the States have. So once they assign the probability they would lend to it, obviously that reduces the amount that gets scored.

Once again, it shows they are trying to impose a fee where they have no right to do it, so it did create some scoring issue that it really never should. The fact is the litigation would far outweigh the score that CBO has put on it, both to the Federal Government and to the respective States. In the end there would be no fees because there is no right to assess those fees.

I think we have someone who as a former attorney general dealt, in fact, with this very type of issue during her tenure as attorney general. I turn to my colleague from North Dakota and ask that she comment on the legality of the issue as well as her thoughts in terms of the fairness and the States rights aspect, which truly makes this an issue our colleagues should join and support. This is exactly what could happen to them, and it could happen to their States.

I turn to Senator HEITKAMP for her thoughts in that regard.

The PRESIDING OFFICER. The junior Senator from North Dakota.

Ms. HEITKAMP. I say thank you to my colleagues from North Dakota and South Dakota. Mr. President, this is not a new issue. This is an issue—even back in the 1990s—I dealt with as the State's attorney general. Why do I mention that? I mention it because we were able to persuade the corps at the time that the intake pipe they were attempting to charge for surplus water was actually in the original river bed. I—just tongue-in-cheek—suggested I would charge them for putting their water on top of our water, and maybe they should pay a fee to us for the storage we were going to allow them.

In all seriousness, this is not an issue that is going to go away. If any of our colleagues think this is an issue where we can just let it go and ride it out, this is an issue that has percolated for a lot of years. It has culminated right now to this effort to be proactive in this body to prevent litigation, prevent excess expense, and prevent a deterioration of a relationship that is essential to making sure we have flood protection and all of the other good that came out of the Flood Control Act.

So the time is now to take an immediate step to prevent this issue from going any further and to address the concerns that upstream States have.

I want to spend just a few moments talking about this from a legal perspective and what could happen if, in fact, the Federal Government engaged in litigation with the States.

We have heard today from both South Dakota and North Dakota Senators. I am reasonably sure Montana would not allow this precedent to stand without some pushback and an absolute commitment from a bipartisan standpoint from all the upstream States for a pushback.

Let's talk about why there are legal problems with the corps approach. Charging fees for surplus waters, I believe, would violate a State's right to the water that naturally flows through the boundaries as historically recognized by the Federal Government and as recognized by the 10th Amendment.

Charging fees would violate statutory law. Section 1 of the 1944 Flood Control Act provides protection for water resources in Western States. We have a common law water rights argument, a historic argument, and we have a statutory argument.

I think charging fees would reverse decades of corps policy on surplus water and create a precedent which should not be established, not only in the upper Missouri basin but should not be established anyplace in this country. That is why this is an issue that is not just about the Dakotas, it is not just about Montana and the upstream States, it is an issue that every one of our colleagues has an interest in reviewing. If they can do it in this case, why can't they do it in any other reservoir.

Charging fees would penalize Montana, North Dakota, and South Dakota by charging for water that is freely available in the absence of the corps reservoir. If there were no reservoir, there would be no issue. In fact, if they tried to charge, most of our colleagues would find that absolutely atrocious. This is in the face of what we know we have sacrificed for flood control in that basin.

I want to mention the unique interest that the Mandan, Hidatsa, Arikara Nation, along with the Standing Rock Nation have and what they have sacrificed for flood control, what they have sacrificed in terms of loss of their

land, division of their reservation boundaries, and division of their property. Now, the corps is saying: Yes, we took your land. Yes, we disrupted your natural boundaries and your natural way of life, and now we are going to charge you for the water that sits on your historic homeland.

Mrs. BOXER. Will the Senator yield for a unanimous consent request?

Mr. HOEVEN. Mr. President, I ask unanimous consent for another 5 minutes.

Mrs. BOXER. We have a vote locked in at 5 p.m., so the Senator can speak up until 5 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. I ask unanimous consent that at 5 p.m., the Senate vote in relation to the Inhofe, Barrasso, and Sanders amendments as provided under the previous order; that following the vote in relation to the Sanders amendment, the Senate proceed to a period of morning business with Senators permitted to speak up to 10 minutes; further, that when the Senate resumes consideration on S. 601 on Wednesday, May 15, it resume the voting sequence in the previous order with all after the first vote being 10 minutes and all other provisions of the previous order remaining in effect.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. BOXER. For the information of all Senators, it is our expectation that the Inhofe amendment will be the subject of a voice vote. If that occurs there will be two rollcall votes this evening, and the remainder of the votes will occur tomorrow.

I yield the floor.

Ms. HEITKEMP. So when we look at water surplus fees and we think about the fact that we have given our land, we have given our opportunity to have free access to our water, we have done all of this with the idea that it is for the better good of this country, to now charge our citizens and people who have always had historic access to that water—this fee looks a whole lot like a tax—it is adding insult to injury.

I can guarantee that this issue will not go away. If we don't prevail, what we are buying is a lawsuit because the Corps of Engineers is not going to give up. The Corps of Engineers will continue to advance and promote this idea until they implement this idea, and then we are going to be in litigation.

This issue will not go away. The easiest way to resolve this issue in an amiable way and in a way that is going to maintain the kind of historic relationship we have with our tribes is to deal with it today. We need to deal with it within the Water Resources Development Act we are enacting. We need to support amendment No. 909, the amendment of my good friend and colleague JOHN HOEVEN, the Senator from North Dakota, and put this idea to bed once and for all that the corps cannot charge us for water that historically and legally belongs to the States where that water is located.

I yield the floor.

Mr. HOEVEN. I wish to thank again my colleague for her comments in regard to the legal aspect; again, she brings a lot of direct experience working with this issue. So I thank her for her comments with regard to the legal aspect, but she makes another very important point. This isn't just about States rights; this would be a taking of tribal rights too.

I am going to turn to my colleague from South Dakota and ask him a question on this very same subject. But, in fact, in North Dakota, it is going to be one of our tribes that is most disenfranchised by this action of the corps. Because, again, we have made the point we can take water out of the river. We can continue to do that. They can't charge us for water coming from the river.

The other place they are trying to charge for water is out of the reservoir. But most of the reservoir in North Dakota is inside the tribe reservation, so the people who would be most dramatically impacted, in fact, would be Native Americans in our State.

I am going to turn to our colleague from South Dakota. I am guessing that is true in South Dakota as well.

Mr. THUNE. I would just say to both of my colleagues from North Dakota, that is an absolutely accurate observation.

If we look at who is impacted—and we have the Standing Rock Tribe that is partly in North Dakota and partly in South Dakota so it crosses the State border. We have the Cheyenne River Sioux Tribe, the Coal Creek Sioux Tribe, the Yankton Tribe. We have a whole bunch of reservations as we go right down that corridor of the Missouri River that would be profoundly impacted. As we mentioned earlier, when this land was given up, when the dams were built, this was a lot of not only private land but tribal-held land which they gave up. This would directly impact the access they would have to water that is rightfully theirs.

So in addition to the concerns our States have and our attorneys general have, we also have a lot of tribes that have a very vested interest in making sure this doesn't happen. That is why it is so important that our colleagues support the amendment of the Senator from North Dakota, because as was pointed out by Senator HEITKAMP, this is precedent setting. If they can do this here, they may try and do it someplace else.

I also think—and the point was made by both of my colleagues—this is a very practical consideration. It will cost the Federal Government and our States a lot more than what they are saying this is going to achieve in terms of revenues when this goes to court. Both the States and the Federal Government will be locked up, I would suspect, in litigation for some time. The amount of revenues that would be raised by the fees that would be imposed under the various proposals that are being advanced by the corps simply would pale in comparison to the litigation costs that would be involved.

So that is a very practical consideration. I concur. I am not a lawyer, and I certainly am not a former attorney general or former Governor. I know both of my colleagues have experience with these issues. But I can tell my colleagues from talking with our Governor and our attorney general they are highly confident that legally this is a very open-and-shut situation and a case in which our State would prevail. So it seems sort of crazy in a way that we would even have to go down that trail, and I hope we can prevent it from happening by having our colleagues join us in support of this amendment.

Mr. HOEVEN. Mr. President, I wish to thank my colleague from South Dakota and turn to my colleague from North Dakota for any final thoughts before we yield the floor.

Ms. HEITKAMP. Mr. President, my colleagues from North and South Dakota and I come from practical States. We come from States where we try to anticipate problems and we solve problems before they turn into big, expensive pieces of litigation, and that is what that amendment does. This amendment addresses, in a proactive way, a policy we know will not be put to bed until this body speaks. Let's do it now. Let's do it kind of in the way we do it in our States. Let's be proactive. Let's make sure we aren't wasting money and wasting relationships on litigation and that we are moving forward to manage the Upper Basin as best we can and that we do what is right by the people of our State and the people in our tribal governments and our Native American neighbors.

AMENDMENT NO. 909

Mr. HOEVEN. Mr. President, with that, I wish to set aside the pending amendment and call up the Hoeven amendment No. 909.

I wish to close with a couple other thoughts. Senator BAUCUS from Montana wanted to join with us in the colloquy, but the timeline didn't work out. So I wished to express my appreciation for his support and sponsorship of this legislation as well.

I wish to again make the point that this isn't about using the water. Our respective States will still use the water. The issue is about being charged for it. That is a very important point, so that nobody tries to confuse this issue in order to try to get opposition to the issue. We will still use the water; it is just that we will be charged for it unfairly, except for the fact—as we said, this would be tied up in litigation creating a bunch of costs for the State and the Federal Government, so that wouldn't really happen. So what we are doing is solving a very important problem. It is one that all of the States need to be cognizant of, because

if a Federal agency can come in and try to do it to one State, it can do it to any one of the States. This is a fundamental issue regarding States rights.

If any of our colleagues have questions or concerns about the amendment, I encourage them to come to us. We want to talk to them about it. We truly believe, if they understand the facts, they will be strongly supportive.

Again, I wish to turn to my colleague from South Dakota.

Mr. THUNE. One final point of clarification and perhaps the Senator from North Dakota can react and comment on this as well.

My understanding is, of course, that this doesn't have any impact on the master manual, the way in which the corps manages the reservoir. So the degree to which there might be concern about whether this is our water versus their water, which historically has plagued a lot of the discussions about the Missouri River—upstream-downstream interests. As the Senator from North Dakota pointed out, the water is going to get used. It is water that is either stored or used. I think it is a question of whether we are going to be charged, the users of that water are going to be charged, and that does, of course, create precedent. If that is something they can do here, the question is, What is the next State? Because this violates a principle of federalism, as pointed out by the attorney general of South Dakota in his letter to the Corps of Engineers.

But I wanted to say for the record, perhaps to those who are viewing this as an upstream-downstream battle, that is not the case. This does not affect the master manual, to my knowledge, and I ask the Senator from South Dakota to react to that as well.

Mr. HOEVEN. Mr. President, the Senator is absolutely right. I wish to thank him for emphasizing that point. It is very important. Again, that is why I encourage any of our colleagues to discuss this issue with us if they have any concerns whatsoever. It is just a fundamental fairness issue, and we ask for an affirmative vote from our colleagues.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. HOEVEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Without objection, the clerk will report the Hoeven amendment.

The assistant bill clerk read as follows:

The Senator from North Dakota [Mr. HOEVEN] proposes an amendment numbered 909.

Mr. HOEVEN. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 909

(Purpose: To restrict charges for certain surplus water)

On page 190, after line 23, add the following:

SEC. 2060. RESTRICTION ON CHARGES FOR CERTAIN SURPLUS WATER.

(a) IN GENERAL.—No fee for surplus water shall be charged under a contract for surplus water if the contract is for surplus water stored on the Missouri River.

(b) OFFSET.—Of the amounts made available under Public Law 113–6 (127 Stat. 198) for operations and maintenance under the heading ''Corps of Engineers—Civil'', $5,000,000 is rescinded.

Mr. HOEVEN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

AMENDMENT NO. 868

Mrs. BOXER. Mr. President, shortly we are going to vote; I believe it will be a voice vote on the Inhofe amendment. It is not a controversial amendment; everybody agrees to it. Then we will proceed to the Barrasso amendment which I have spoken about before.

I wish to urge my colleagues to be very careful on this one because it has unintended consequences. The way the Barrasso amendment is drafted, it tries to say, in advance of a rulemaking, that if the rulemaking includes any infrastructure from the guidance that has been put forward by the corps and the EPA—if it even contains anything like it—''the rule will be considered as having been vacated.'' That is a quote.

So the bottom line is, the Barrasso amendment is such an overreach that we will keep the whole issue of waters of the United States in chaos—and it is in chaos. We received letters from business people begging us to allow the rulemaking to go forward, but because of the way the Barrasso amendment is drafted, essentially we are not going to ever have a rule.

So why is it important to have a rule that is very clear and explains what waters are covered under the Clean Water Act? Let me tell my colleagues why. Without protections of a rule, dangerous pollutants could be put into our waterways. This isn't just hyperbole. We are talking about toxic heavy metals such as arsenic and lead. We are talking about toxins that cause cancer and harm the health of infants and children in particular. Who are the vulnerables? The infants, the children and the elderly and those who are disabled. They are the ones who are the victims of filthy, dirty water.

I am not saying my friend Senator BARRASSO wants to get people sick. I am not saying that. But I am saying there is an unintended consequence of the overreach in this amendment which is pretty clear to all who read it. It says if the draft guidance that has already been looked at is included in any way, shape or form into a final rule, then the whole rule is thrown out on its face and that leaves the situation in chaos.

Say I come to the Presiding Officer and say: I am going to write a book about mathematics. The Presiding Officer says: That is very exciting, but there is only one thing. I am your publisher and you can't put one single number in the book—not a 1 to a 2 to a 3. You can write a book on mathematics, but it can't contain any numbers. That is the most ridiculous situation. But this is the essence of the Barrasso amendment. It is telling people who are going to write a rule that they can't take anything that was put in the draft guidance and put it into that rule. It makes absolutely no sense.

I want to protect people from toxics such as lead and arsenic. Without these safeguards of the rule, our drinking water supplies would be more at risk and the laws of these protections would increase the risks of dangerous floods in downstream communities because it would eliminate wetlands protections.

One of the things I learned when I was a county supervisor a very long time ago is that wetlands kept in their natural state and enhanced are the best way to have flood protection. When I went to Louisiana after Katrina, I was struck by the fact that the whole community understood the importance of the wetlands, because they absorb the floodwaters.

So now, because we are not going to be able to define what is a body of water that falls under the Clean Water Act, we are going to have a major problem with our wetlands. We are going to have a major problem with our rivers. We are going to have a major problem with our streams. We are talking about enormous bodies of water that are unprotected now because there is no rule. Under the Barrasso amendment, my opinion is—and it isn't just my opinion—there will not be any rule because if the rule picks up anything in the guidance at all—anything substantially similar to the guidance at all—it will be automatically overturned.

I wish to say to my friend, if he doesn't like a rule, he has the CRA, the Congressional Review Act. He can wait until he gets the rule. Don't prejudge it. Don't say the rule is vacated. That is pretty dictatorial to people who are in charge of protecting our water supply.

Nobody wants our kids to get more cancer. Nobody wants this to happen. We have to protect streams that provide drinking water for up to 117 million Americans. We have 20 million acres of wetlands that provide flood protection, improve water quality, and serve as wildlife habitat.

So the hour of 5 o'clock is upon us. We are going to vote on the Inhofe amendment first. Then we will turn to Senator BARRASSO for a moment to make his case, and then I will have 1 minute after that. So at this time we return to regular order. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mrs. BOXER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 797

Mrs. BOXER. Madam President, I call up Inhofe amendment No. 797.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for Mr. INHOFE, proposes an amendment numbered 797.

Mrs. BOXER. I ask unanimous consent to yield back all time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 797) was agreed to, as follows:

(Purpose: To authorize a land exchange)

At the end of title XII, add the following:

SEC. 12___. TULSA PORT OF CATOOSA, ROGERS COUNTY, OKLAHOMA LAND EXCHANGE.

(a) DEFINITIONS.—In this section:

(1) FEDERAL LAND.—The term ''Federal land'' means the approximately 87 acres of land situated in Rogers County, Oklahoma, contained within United States Tracts 413 and 427, and acquired for the McClellan-Kerr Arkansas Navigation System.

(2) NON-FEDERAL LAND.—The term ''non-Federal land'' means the approximately 34 acres of land situated in Rogers County, Oklahoma and owned by the Tulsa Port of Catoosa that lie immediately south and east of the Federal land.

(b) LAND EXCHANGE.—Subject to subsection (c), on conveyance by the Tulsa Port of Catoosa to the United States of all right, title, and interest in and to the non-Federal land, the Secretary shall convey to the Tulsa Port of Catoosa, all right, title, and interest of the United States in and to the Federal land.

(c) CONDITIONS.—

(1) DEEDS.—

(A) DEED TO NON-FEDERAL LAND.—The Secretary may only accept conveyance of the non-Federal land by warranty deed, as determined acceptable by the Secretary.

(B) DEED TO FEDERAL LAND.—The Secretary shall convey the Federal land to the Tulsa Port of Catoosa by quitclaim deed and subject to any reservations, terms, and conditions that the Secretary determines necessary to—

(i) allow the United States to operate and maintain the McClellan-Kerr Arkansas River Navigation System; and

(ii) protect the interests of the United States.

(2) LEGAL DESCRIPTIONS.—The exact acreage and legal descriptions of the Federal land and the non-Federal land shall be determined by surveys acceptable to the Secretary.

(3) PAYMENT OF COSTS.—The Tulsa Port of Catoosa shall be responsible for all costs associated with the land exchange authorized by this section, including any costs that the Secretary determines necessary and reasonable in the interest of the United States, including surveys, appraisals, real estate transaction fees, administrative costs, and environmental documentation.

(4) CASH PAYMENT.—If the appraised fair market value of the Federal land, as determined by the Secretary, exceeds the appraised fair market value of the non-Federal land, as determined by the Secretary, the Tulsa Port of Catoosa shall make a cash payment to the United States reflecting the difference in the appraised fair market values.

(5) LIABILITY.—The Tulsa Port of Catoosa shall hold and save the United States free from damages arising from activities carried out under this section, except for damages due to the fault or negligence of the United States or a contractor of the United States.

Mrs. BOXER. I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. BOXER. Madam President, what is the order at this time?

AMENDMENT NO. 868

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 minutes of debate equally divided prior to the vote on amendment No. 868 offered by the Senator from Wyoming, Mr. BARRASSO.

The Senator from Wyoming.

Mr. BARRASSO. Madam President, this amendment restricts the expansion of Federal authority to encompass all wet areas of farms, ranches, and suburban homes across the United States. They want to do it through guidance, this proposed guidance that is used by Federal agencies. It seems that they are preparing to expand the definition of waters of the United States to include ditches and other dry areas where water flows only for a short duration after a rainfall.

This guidance is going to have a huge impact on farmers, ranchers, and small businesses that need to put a shovel in the ground to make a living. This guidance will, in fact, trump States rights by preempting State and local governments from making local land and water use decisions.

I have always believed the State and local governments, not Washington, know best how to protect their communities from environmental harm. The guidance does exactly the opposite and puts the power of these decisions in the hands of bureaucrats in Washington.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. BOXER. Madam President, the way my colleague and friend has drafted his amendment is very dangerous to the process because he wants to say if, in the rulemaking where we will define the waters of the United States, if they even so much as refer to the guidance that has been put forward, the draft guidance, there will be no rule.

The problem of not having a rule is we leave in place chaos. States cannot go ahead and handle this themselves. Local governments cannot. Under the law, according to all the rules of the Court and everybody else, we have to have a definition. No one I know wants to classify a ditch or a puddle as a water of the United States. That is always brought up, but that is just a red herring.

We need to make sure we have a Clean Water Act that protects the people, protects their drinking water, and makes sure they are safe when they swim in a lake. If we do not move forward with a rule, at the end of the day this amendment will not allow that to happen, and we are in chaos. It does not protect our people from arsenic, from lead, from whatever objects there may be in a body of water. So I hope we will reject this. I thank my friend for offering it, but I think it is misguided.

I yield the floor.

Mr. BARRASSO. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Washington (Mrs. MURRAY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 52, nays 44, as follows:

[Rollcall Vote No. 119 Leg.]

YEAS—52

Alexander	Fischer	McCaskill
Ayotte	Flake	McConnell
Barrasso	Graham	Moran
Begich	Grassley	Paul
Blunt	Hagan	Portman
Boozman	Hatch	Pryor
Burr	Heitkamp	Risch
Chambliss	Heller	Roberts
Coats	Hoeven	Rubio
Coburn	Inhofe	Scott
Cochran	Isakson	Sessions
Collins	Johanns	Shelby
Corker	Johnson (WI)	Thune
Cornyn	Kirk	Toomey
Crapo	Landrieu	Vitter
Cruz	Lee	Wicker
Donnelly	Manchin	
Enzi	McCain	

NAYS—44

Baldwin	Gillibrand	Reid
Baucus	Harkin	Rockefeller
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Boxer	Johnson (SD)	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Stabenow
Cardin	Klobuchar	Tester
Carper	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Coons	Menendez	Warner
Cowan	Merkley	Warren
Durbin	Mikulski	Whitehouse
Feinstein	Murphy	Wyden
Franken	Reed	

NOT VOTING—4

Lautenberg	Murray
Murkowski	Nelson

The ACTING PRESIDENT pro tempore. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is rejected.

Mrs. BOXER. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. BOXER. I want to tell my colleagues what the plan is for tonight and tomorrow on the WRDA bill and thank everyone so much on both sides of the aisle for their cooperation. Senator VITTER and I are so happy we are able to have this open process, and we will finish this bill tomorrow. This will be the last vote this evening. We will continue late morning and complete our work. Right now we are going to have the Sanders amendment, with 2 minutes equally divided, and both Senators from Vermont would like to be heard.

AMENDMENT NO. 889

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 889, offered by the Senator from Vermont, Mr. SANDERS.

The Senator from Vermont.

Mr. SANDERS. This amendment impacts Vermont today, but it can impact any and every State in this country if it experiences a major flood or a natural disaster.

We all know FEMA compensates communities for rebuilding bridges and culverts damaged during storms such as Irene, but what is not widely known is that FEMA insists that local communities, in order to get reimbursed, must build culverts and bridges to the same standards that already failed and are likely to fail again. It is not terribly sensible. That is what this amendment deals with.

I yield to my colleague from Vermont, Senator LEAHY.

The ACTING PRESIDENT pro tempore. The Senator from Vermont, Mr. LEAHY.

Mr. LEAHY. Madam President, all we are saying is that if you are going to be getting relief from the Federal Government but you have a better way to rebuild your culverts, you can do it that way rather than to have the ones that failed before.

I am sure there are a whole lot of States here that will be affected by this amendment, and I hope it will be approved.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Madam President, as ranking member on the Homeland Security and Governmental Affairs Committee, I know there are a lot of problems with FEMA and the Stafford grant, but this is essentially an earmark for an improvement before FEMA has even determined whether it is going to give mitigation grant money to the State of Vermont.

We need to do a lot in the way of changes with FEMA and grants and the Stafford grant monies. We know that, and we are working on that in Homeland Security. But this starts a process that sets a precedent that will be terrible. This is nothing right now but an earmark for one area, to benefit one State, when we need to make improvements in the whole process.

I hope my colleagues will look at the big picture rather than the small picture, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

Mr. DURBIN. I announce that the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Washington (Mrs. MURRAY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

The result was announced—yeas 56, nays 40, as follows:

[Rollcall Vote No. 120 Leg.]

YEAS—56

Baldwin	Gillibrand	Pryor
Baucus	Hagan	Reed
Begich	Harkin	Reid
Bennet	Heinrich	Rockefeller
Blumenthal	Heitkamp	Sanders
Boxer	Hirono	Schatz
Brown	Johnson (SD)	Schumer
Cantwell	Kaine	Shaheen
Cardin	King	Stabenow
Carper	Klobuchar	Tester
Casey	Landrieu	Udall (CO)
Cochran	Leahy	Udall (NM)
Collins	Levin	Vitter
Coons	Manchin	Warner
Cowan	McCaskill	Warren
Donnelly	Menendez	Whitehouse
Durbin	Merkley	Wicker
Feinstein	Mikulski	Wyden
Franken	Murphy	

NAYS—40

Alexander	Fischer	McConnell
Ayotte	Flake	Moran
Barrasso	Graham	Paul
Blunt	Grassley	Portman
Boozman	Hatch	Risch
Burr	Heller	Roberts
Chambliss	Hoeven	Rubio
Coats	Inhofe	Scott
Coburn	Isakson	Sessions
Corker	Johanns	Shelby
Cornyn	Johnson (WI)	Thune
Crapo	Kirk	Toomey
Cruz	Lee	
Enzi	McCain	

NOT VOTING—4

Lautenberg	Murray
Murkowski	Nelson

The ACTING PRESIDENT pro tempore. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is rejected.

Mrs. FISCHER. Madam President, I rise today to speak on S. 601, the Water Resources Development Act, WRDA. I would like to focus on Senate Amendment No. 801, a bipartisan provision to provide regulatory relief to our country's farmers and ranchers. Senate Amendment No. 801 is based on S. 496, the Farmers Undertake Environmental Stewardship Act, FUELS Act.

The FUELS Act was introduced by Senator MARK PRYOR and has 10 cosponsors from both sides of the aisle including Senators JOHN BOOZMAN, SAXBY CHAMBLISS, THAD COCHRAN, JOHN CORNYN, HEIDI HEITKAMP, JAMES INHOFE, JOHNNY ISAKSON, MIKE JOHANNS, MARY LANDRIEU, and myself. It was referred to the Senate Environment & Public Works Committee, of which I am a member.

I filed the FUELS Act as an amendment to WRDA when it was considered earlier this year by the Senate Environment & Public Works Committee. The amendment was not considered at that time.

The House version of the FUELS Act, H.R. 311, was introduced by Congressman RICK CRAWFORD and has 69 cosponsors. In the 112th Congress, the FUELS Act, H.R. 3158, was reported by the House Transportation and Infrastructure Committee and passed the House by voice vote. The House Committee Report for H.R. 3158 (Report 112–643) provides background and discusses the need for legislation:

The EPA mandated Oil Spill Prevention, Control and Countermeasures program, or SPCC, requires that oil storage facilities with a capacity of over 1,320 gallons must make infrastructure improvements to reduce the possibility of oil spills. The regulations require farmers to construct a containment facility, like a dike or a basin, which must retain 110 percent of the fuel in the container. These mandated infrastructure improvements—along with the necessary inspection and certification by a specially licensed Professional Engineer will cost many farmers tens of thousands of dollars. Sometimes compliance costs reach higher than $60,000.

The SPCC program dates back to 1973, shortly after the Clean Water Act was signed into law. In the last decade, it has been rigorously applied to agriculture lands, and has been amended, delayed, and extended dozens of times. The Obama administration updated the rule in 2009 to expand regulation under the SPCC program—applying it to nearly all farms, and lifting a 2006 rule that suspended compliance requirements for small farms with oil storage of 10,000 gallons or less. It applied to crop oil, vegetable oil, animal fat, and even milk. Further revisions came during April of 2011 when the EPA decided to exempt milk.

The 2009 rule—minus regulating milk spills was scheduled to go into effect in November 2011. A few weeks before the November deadline, EPA issued a statement saying they would not begin enforcement until May of 2013. While enforcement has been delayed until 2013, the underlying regulation has not been fixed.

The FUELS Act requires that EPA revise the SPCC regulations to be reflective of a producer's spill risk and financial resources. The exemption level would be adjusted upward from 1,320 gallons of oil storage to an amount that would protect small farms: 10,000 gallons. The proposal would also place a greater degree of responsibility on farmers and ranchers to self-certify compliance if their oil storage facilities exceed the exemption level. If the amount exceeds 42,000 gallons, a professional engineer must certify the SPCC plans for a farm. The bill provides another layer of protection by requiring the producer to be able to demonstrate that he or she has no history of oil spills, or to fully comply with the SPCC regulations.

The University of Arkansas, Division of Agriculture did a study that concluded that, for the entire country, H.R. 3158 would save farmers and ranchers up to $3.36 billion.

Agricultural production is an energy-intensive endeavor. Farmers need fuel to power machinery, equipment, and irrigation pumps. Because these operations are in rural areas where regular access to fuel supplies is limited, producers rely upon on-farm fuel storage capacity to provide the supply we need at the times we need it.

My family operates a cattle ranch in the Nebraska Sandhills, so I can tell you firsthand that farmers and ranchers take great pride in the work we do. Our success is the direct result of careful stewardship of our natural resources, which we depend upon for our livelihoods. In agriculture, we know the value of clean water, and we work hard to protect the quality of our streams and aquifers. When it comes to preventing spills from our on-farm fuel storage, farmers already have every incentive to do so—not the least of which is the high cost of diesel and gasoline.

I receive calls and letters every day from Nebraska farmers concerned about the compliance challenges associated with the SPCC rule for on-farm fuel storage, a regulation originally designed for oil refineries. Allow me to share a portion of one such constituent email I recently received on this issue:

> We just became aware of this regulation yesterday through an email from Farm Bureau. Since we have a large quantity of on-farm storage capacity, we are not able to self-certify and must hire a professional engineer to create a plan. In order to find a qualified engineer, I first called the EPA, who then told me to call the Region 7 office out of Kansas City, who then told me to call the Nebraska Board of Engineers, who then told me to call the Nebraska Society of Professional Engineers, but the number on their website is no longer in service. When I asked the gentleman from the Nebraska Board of Engineers how much it would cost, he said anywhere from $1500-$4800, depending on the complexity and the engineer's ability to charge more due to high demand due to the approaching deadline. When I asked the gentleman from the EPA Region 7 office why we hadn't heard about it before now, he said the ruling was in place for a long time but they haven't done a good job of getting the word out.

When I shared these frustrations with Gina McCarthy, the nominee for EPA Administrator, she acknowledged at her nomination hearing on April 11, 2013, that ''the agency has bridges to build with the agriculture community.'' The fact is that good stewardship on farms and ranches and environmental improvements are achieved because of producers' application of new technology, best practices, and conservation measures.

Centralized management and mandates are all too often arbitrary, ineffectual, or even counterproductive, lacking the insight of local stakeholders. I ask unanimous consent to have printed in the RECORD a letter from the stakeholder groups on this issue that illustrates this point, July 25, 2012 letter to the House Committee on Transportation and Infrastructure. This letter from national agriculture groups—including the American Farm Bureau Federation, American Soybean Association, National Association of Wheat Growers, National Cattlemen's Beef Association, National Chicken Council, National Corn Growers Association, National Cotton Council, National Council of Farmer Cooperatives, National Milk Producers Federation, National Turkey Federation, and USA Rice Federation explains the arbitrary nature of the current regulation: ''EPA's unusual threshold number of 1,320 gallons has no basis in science or in normal tank sizes for agriculture.''

WRDA will require EPA, in consultation with the U.S. Department of Agriculture, USDA, to conduct a study to determine the appropriate exemption level ''to not more than 6,000 gallons and not less than 2,500 gallons, based on a significant risk of discharge to water.'' The intent of this provision is to ensure that EPA is not unnecessarily regulating on-farm fuel storage at capacities that do not pose a significant risk to harming water quality. If there is not a significant risk, then regulation is not justified. Compliance costs should not be imposed where there is not a significant risk.

A March 2005 USDA report, Fuel/Oil Storage for Farmers and Cooperatives, states, ''The SPCC rule will have a substantial cost of compliance for the nation's farmers. A total compliance cost of almost $4.5 billion is projected. There is very little evidence of fuel/oil spill by farms.'' The report goes on to state that ''the 1,320 gallons aggregated storage trigger is not supported by the survey data. Compliance at this level not only ignores the physical layouts of farm fuel storage but it also imposes a broad and extreme impact on the majority of farms. Nearly 70 percent of all farms would have to comply, at an average aggregated tank cost of $9,215 and a total compliance cost of $4.5 billion.''

I also ask unanimous consent to have printed in the RECORD other letters of support for the FUELS Act from agricultural stakeholders, including letters from the American Farm Bureau Federation, USA Rice, National Corn Growers Association, American Soybean Association, National Cotton Council, National Association of Wheat Growers, National Cattlemen's Beef Association, and National Council of Farmer Cooperatives, NCFC.

This quote from the NCFC letter illustrates the points I have made, further explains the need for the legislation, and emphasizes the importance of the EPA-USDA study in ensuring that we are not unnecessarily regulating capacity levels at which no significant risk of oil spills has been demonstrated.

> Without question the members of the agricultural sector who grow the nation's food and rely on surface and well water to meet their families' and agricultural operations' needs are highly motivated to ensure that their environmental practices are sound. These producers work daily to ensure a safe environment for their children and the communities in which they live. As such, they can and do take very seriously their responsibility, consistent with the intent and spirit of the SPCC provisions, to properly manage the oil resources used on their operations.
>
> Row crop farms, ranches, livestock operations, farmer cooperatives and other agribusinesses pose low risks for spills and are often seasonal in nature. In fact, data on oil spill on farms, cooperatives, and other agribusinesses is almost nonexistent. The Agency has failed to provide data or even anecdotal evidence of agricultural spills to justify such a resource-intensive rulemaking for America's farmers and ranchers. The risk of such spills from agriculture is extremely low and there is little to no evidence that providing greater flexibility through S. 496 will harm the environment.

The Senate's approval of WRDA will be a huge victory for farmers throughout Nebraska and across America, who should not face unnecessary regulations. The bipartisan provision regarding on-farm fuel storage raises the exemption levels for fuel storage capacity to better reflect the spill risk and financial resources of farms. I appreciate my colleagues' support and cooperation on this issue.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JULY 25, 2012.

Hon. JOHN MICA,
Chairman, House Committee on Transportation and Infrastructure, Rayburn House Office Building, Washington, DC.

Hon. NICK RAHALL,
Ranking Member, House Committee on Transportation and Infrastructure,, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN MICA AND RANKING MEMBER RAHALL: The undersigned organizations would like to express our strong support for H.R. 3158, the Farmers Undertake Environmental Land Stewardship (FUELS) Act, H.R. 3158 would bring some much needed clarity to agriculture on the confusing requirements of the EPA's Spill Prevention, Control, and Countermeasure (SPCC) rule.

As you are aware, farming is an energy-intensive profession. Producers need fuels stored on-farm for everything from fueling mobile equipment to running irrigation pumps. Many of these tanks are seasonal use and stay empty much of the year due to the high cost of fuel and the possibility of theft. Furthermore, EPA's unusual threshold number of 1,320 gallons has no basis in science or in normal tank sizes for agriculture.

In addition, EPA's bifurcation of the rule date (before and after August 16, 2002) has brought immense, unneeded confusion to the farming community as they try to determine whether their current business model is the same that was in operation prior to the 2002 date. The requirement to have Professional Engineers (PEs) sign off on many SPCC plans adds significant costs to the producer as well as the time spent trying to find the limited number of PE's willing to work on this rule in agricultural areas. It has already led to PEs telling producers many things that aren't in the rule as they try to oversell their product.

While the undersigned organizations welcome EPA's extension of the deadline to May 10, 2013, that extension only applies to farms in operation after August 16, 2002, further confusing the industry. Furthermore, farms are still under the costly requirements of providing secondary containment to many seasonal-use tanks and developing complicated 'spill plans'. Despite pleas to the agency for compliance assistance, they have been slow to respond, and despite invitations

to grower meetings, they have little funding for travel.

Thankfully, this Congress has the opportunity to ease this burden on rural America. H.R. 3158 would provide realistic threshold sizes for tank regulation at the farm level and allow more farms to self-certify thus saving time and money that would otherwise be spent in hiring PE's to sign the SPCC plans.

H.R. 3158 is common sense legislation that the undersigned strongly support. We urge the Committee and Congress to pass the bill to help relieve undue regulation on farmers and rural America.

Sincerely,

American Farm Bureau Federation, American Soybean Association, Arkansas Farm Bureau Federation, Montana Grain Growers Association, National Association of Wheat Growers, National Cattlemen's Beef Association, National Chicken Council, National Corn Growers Association, National Cotton Council, National Council of Farmer Cooperatives, National Milk Producers Federation, National Turkey Federation, Pennsylvania Farm Bureau Federation, USA Rice Federation.

NATIONAL COTTON COUNCIL OF AMERICA,
Washington, DC, May 1, 2013.

Hon. MARK PRYOR,
U.S. Senate,
Washington, DC.
Hon. JAMES INHOFE,
U.S. Senate,
Washington, DC.

DEAR SENATORS PRYOR and INHOFE. The National Cotton Council (NCC) supports your efforts to advance S. 496, the FUELS Act.

Your bill will alleviate the costly regulatory burden on farmers resulting from EPA's Spill Prevention, Control, and Countermeasure (SPCC) Rule. EPA's unusual threshold number of 1,320 gallons has no basis in science or in normal tank sizes for agriculture. S. 496 will raise that threshold to a more realistic and practical level. Your bill will also allow more farms to self-certify rather than hiring a qualified professional engineer.

NCC is the central organization of the U.S. cotton industry representing producers, ginners, merchants, cooperatives, textile manufacturers, and cottonseed processors and merchandisers in 17 states stretching from California to the Carolinas. NCC represents producers who historically cultivate between 10 and 14 million acres of cotton. Annual cotton production, averaging approximately 20 million 480-lb bales, is valued at more than $5 billion at the farm gate. While a majority of the industry is concentrated in the 17 cotton-producing states, the down-stream manufacturers of cotton apparel and home-furnishings are located in virtually every state. The industry and its suppliers, together with the cotton product manufacturers, account for more than 230,000 jobs in the U.S. In addition to the cotton fiber, cottonseed products are used for livestock feed and cottonseed oil is used for food products ranging from margarine to salad dressing. Taken collectively, the annual economic activity generated by cotton and its products in the U.S. economy is estimated to be in excess of $120 billion.

Again, the Council supports and appreciates your efforts on this issue.

Sincerely,

E. KEITH MENCHEY,
Manager, Science & Environmental Issues.

MAY 6, 2013.

Hon. MARK PRYOR,
U.S. Senate,
Washington, DC.
Hon. JAMES INHOFE,
U.S. Senate,
Washington, DC.

DEAR SENATORS PRYOR AND INHOFE, On behalf of the National Association of Wheat Growers (NAWG), we appreciate your efforts to advance S. 496, the Farmers Undertake Environmental Land Stewardship (FUELS) Act, and would urge its inclusion in the Water Resources Development Act (WRDA) in the Senate. NAWG and its 22 affiliated state associations work together to help protect and advance wheat growers' interests.

As you are aware, farming is an energy-intensive profession. Producers need fuels stored on-farm for everything from fueling tractors to running irrigation pumps. EPA's unusual 1,320 gallon regulatory threshold under the Spill Prevention, Control, and Countermeasure (SPCC) rule has no basis in science or in normal tank sizes for agriculture. S. 496 would raise the exemption threshold to 10,000 gallons, which is a more reasonable level. It would also allow more farms with aggregate storage capacity between 10,000—42,000 gallons to self-certify rather than hiring a professional engineer.

This common sense amendment to WRDA would ease the burden on smaller producers, and we strongly encourage its adoption. Thank you for your support on this important issue.

Sincerely,

BING VON BERGEN,
President,
National Association of Wheat Growers.

AMERICAN SOYBEAN ASSOCIATION,
St. Louis, MO, May 2, 2013.

Hon. JAMES INHOFE,
U.S. Senate,
Washington, DC.

DEAR SENATOR INHOFE: I am writing on behalf of the American Soybean Association in support of your efforts to include S. 496, the FUELS Act, during Senate consideration of the Water Resources Development Act (WRDA). ASA represents all U.S. soybean farmers on domestic and international issues of importance to the soybean industry. ASA's advocacy efforts are made possible through the voluntary membership in ASA by over 21,000 farmers in 31 states where soybeans are grown.

New rules will take effect at the end of this fiscal year that will require that oil storage facilities with a capacity of over 1,320 gallons make structural improvements to reduce the possibility of oil spills. The plan requires farmers to construct a containment facility, like a dike or a basin, which must retain 110 percent of the fuel in the container.

Most soybean farmers find these threshold levels to be unacceptably low. Your amendment would raise the exemption level to a more reasonable 10,000 gallons for a single container, with farmers able to self-certify compliance if aggregate storage capacity is between 10,000 to 42,000 gallons.

ASA supports this amendment, and urges the Senate to adopt it.

Thank you for your leadership.

Sincerely,

DANNY MURPHY,
ASA President.

MAY 2, 2013.

U.S. Senator MARK PRYOR,
Dirksen Senate Building,
Washington, DC.
U.S. Senator JAMES INHOFE,
Russell Senate Building,
Washington, DC.
U.S. Senator DEB FISCHER,
Hart Building,
Washington, DC.

DEAR SENATORS, The National Cattlemen's Beef Association (NCBA) thanks you for your support of the Farmers Undertake Environmental Land Stewardship (FUELS) Act (S. 496). The FUELS Act eases the burden on farmers and ranchers in implementing the Spill Prevention, Control and Countermeasure (SPCC) rule for farms. NCBA represents over 100,000 cattle producers across the country as the nation's oldest and largest trade association representing cattle ranchers. Our members believe the FUELS Act is a common-sense measure that balances environmental concerns with the burden and cost of the regulation.

U.S. cattle ranchers are proud of their tradition as stewards of our country's natural resources. Our members take very seriously their commitment to protecting water quality from events like fuel spills. They also believe however that the economic burdens of developing spill plans certified by a profession engineer outweigh the marginal benefit that would come with requiring these plans on all farms. Compliance with the rule will cost producers thousands of dollars at a time when their budgets are very limited due to historic drought and other economic factors. In addition, in the rural areas there is an inadequate number of Professional Engineers (P.E.S) to do the engineering work required. The FUELS Act takes into account these considerations. It raises the threshold for fuel storage capacity from a mere 1,320 gallons to 10,000 gallons, which eases the burden on many smaller operations. It also allows more operations to self-certify their plans, eliminating the need for more P.E.s and the increased cost.

The SPCC rule for farms will take effect October 1, 2013 and therefore it is imperative that Congress act to prevent this regulation from creating unnecessary financial burdens on many farmers and ranchers. Thank you for your leadership on this important issue.

Sincerely,

SCOTT GEORGE,
President,
National Cattlemen's Beef Association.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC.

SENATOR,
U.S. Senate,
Washington, DC.

DEAR SENATOR: On behalf of the American Farm Bureau Federation, I would like to commend you for introducing S.496, the Farmers Undertake Environmental Land Stewardship Act. This legislation will help clarify the uncertainty created by existing regulations and the Environmental Protection Agency's (EPA) confusing and potentially costly compliance assistance efforts. AFBF supports the legislation and hopes it will receive strong bipartisan support.

Modern agricultural equipment requires a lot of energy. EPA's current regulatory requirements for farms appear to have little basis in science nor alignment with tank sizes currently in use in agriculture. Equally confusing is EPA's inability to provide clarity with regard to language that asks farmers and ranchers to comply with Spill Prevention, Control and Countermeasure (SPCC) regulations if the operation could reasonably be expected to discharge oil to waters of the U.S. As it stands, this ambiguous term might

apply to features that farmers and ranchers would more likely associate with dry land than water. It is therefore not reasonable for EPA to include such an expectation if it has done nothing to clarify a reasonable understanding of jurisdiction waters that is consistent with congressional intent and judicial case law

S. 496 is common-sense legislation that the Farm Bureau strongly supports. We urge the Senate to pass this amendment to help relieve undue regulation on farmers and rural America.

Sincerely yours,

DALE MOORE.

Senator MARK PRYOR,
Dirksen Senate Office Building,
Washington, DC.
Senator JIM INHOFE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATORS PRYOR AND INHOFE: The USA Rice Federation would like to express our strong support for S. 496, the Farmers Undertake Environmental Land Stewardship Act (FUELS Act), as an amendment to WRDA, the Water Resources Development Act. This bill would bring some much needed clarity to agriculture on the confusing requirements of the EPA's Spill Prevention, Control, and Countermeasure (SPCC) rule.

As you are aware, farming is an energy-intensive profession. Producers need fuels stored on-farm for everything from fueling mobile equipment to running irrigation pumps. Many of these tanks are in use seasonally and stay empty much of the year due to the high cost of fuel and the possibility of theft. Furthermore, EPA's threshold number of 1,320 gallons has no basis in science or in normal tank sizes for agriculture.

In addition, EPA's bifurcation of the rule date (before and after August 16, 2002) has brought immense, unneeded confusion to the farming community as they try to determine whether their current business model is the same that was in operation prior to the 2002 date. The requirement to have Professional Engineers (PEs) sign off on many SPCC plans adds significant costs to the producer as well as the time spent trying to find the limited number of PE's willing to work on this rule in agricultural areas.

The USA Rice Federation has joined other groups in our support of EPA's extension of the deadline to May 10, 2013, but that quickly approaching extension only applies to farms in operation after August 16, 2002, further confusing the industry. Furthermore, farms are still under the costly requirements of providing secondary containment to many seasonal-use tanks and developing complicated and expensive 'spill plans'. Despite pleas to the agency for compliance assistance, they have been slow to respond, and despite invitations to grower meetings, they have little funding for travel.

Thankfully, the Senate has the opportunity to ease this burden on rural America. S. 496 would provide realistic threshold sizes for tank regulation at the farm level and allow more farms to self-certify thus saving time and money that would otherwise be spent in hiring PE's to sign the SPCC plans. S. 496 is a piece of common sense legislation that we strongly support. We urge the Senate to pass the bill to help relieve undue regulation on farmers and rural America as a part of the Water Resources Development Act.

Sincerely,

LINDA C. RAUN,
Chairwoman,
USA Rice Producers' Group.

MAY 3, 2013.

Hon. MARK PRYOR,
U.S. Senate,
Washington, DC.
Hon. JAMES INHOFE,
U.S. Senate,
Washington, DC.

DEAR SENATORS PRYOR AND INHOFE, On behalf of the National Corn Growers Association (NCGA), we appreciate your efforts to advance S. 496, the Farmers Undertake Environmental Land Stewardship (FUELS) Act, and would urge its inclusion in the Water Resources Development Act (WRDA) in the Senate. Founded in 1957, NCGA represents approximately 38,000 dues-paying corn growers and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its 48 affiliated state associations and checkoff organizations work together to help protect and advance corn growers' interests.

As you are aware, farming is an energy-intensive profession. Producers need fuels stored on-farm for everything from fueling tractors to running irrigation pumps. EPA's unusual 1,320 gallon regulatory threshold under the Spill Prevention, Control, and Countermeasure (SPCC) rule has no basis in science or in normal tank sizes for agriculture. S. 496 would raise the threshold the exemption threshold to 10,000 gallons, which is a more reasonable level. It would also allow more farms with aggregate storage capacity between 10,000–42,000 gallons to self-certify rather than hiring a professional engineer.

This common sense amendment to WRDA would ease the burden on smaller producers, and we strongly encourage its adoption. Thank you for your support on this important issue.

Sincerely,

PAM JOHNSON,
President,
National Corn Growers Association.

NATIONAL COUNCIL OF
FARMER COOPERATIVES,
Washington, DC, May 6, 2013.

Hon. MARK PRYOR,
U.S. Senate, Dirksen Senate Office Building,
Washington, DC.
Hon. JAMES INHOFE,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATORS PRYOR AND INHOFE: On behalf of the more than two million farmers and ranchers who belong to farmer cooperatives, the National Council of Farmer Cooperatives (NCFC) applauds your outstanding work to create sound policies that maintain the economic and environmental health of farms, ranches, and the rural communities where they operate. This commitment is evident in S. 496, the Farmers Undertake Environmental Land Stewardship Act (FUELS Act).

The SPCC rule was originally promulgated on December 11, 1973. In 1991, a proposed rule was initiated but floundered for more than 11 years. In a move that caught many off guard, the Agency published a final rule on July 17, 2002, amending the SPCC regulations. This new rule became effective on August 16, 2002, and applied to any facility—including farms—with an aggregate of 1,320 gallons of oil on their property in aboveground tanks of 55 gallons or greater, where the spill might eventually reach navigable waters. That rulemaking showed a lack of understanding of production agriculture and as a result, required multiple revisions and compliance deadline extensions that spanned over decade.

While we welcomed the extension of the compliance deadline to May 10, 2013, that extension only applied to those agricultural operations that currently have an SPCC plan or new facilities that came into operation after the rule was effective. Specifically, if a farm was in existence prior to August 16, 2002, the compliance extension was not applicable as these farms were supposed to be in compliance with the SPCC rule and have a plan in place. EPA's bifurcation of the rule date (before and after August 16, 2002) has brought immense, unneeded confusion to the farming community as they try to determine whether their current business structure was in place prior to the 2002 date.

At the same time, the Agency has unfortunately struggled with efforts to prepare guidance and mobilize specific outreach activities in a timely manner in order to provide the farming community with the understanding and necessary tools to comply with the final rule.

Throughout the history and evolution of the SPCC rule, NCFC has strived to maintain a constructive dialogue with EPA to ensure that any agency action regulating oil spill prevention and response take into account the uniqueness of the agricultural industry; be based on sound science, need, and identified risk; and that final regulations be clear and allow time for education and implementation. While the Agency has shown good faith in working to improve the SPCC rule for agriculture, these efforts have proceeded in fits and starts.

Without question the members of the agricultural sector who grow the nation's food and rely on surface and well water to meet their families' and agricultural operations' needs are highly motivated to ensure that their environmental practices are sound. These producers work daily to ensure a safe environment for their children and the communities in which they live. As such, they can and do take very seriously their responsibility, consistent with the intent and spirit of the SPCC provisions, to properly manage the oil resources used on their operations.

Row crop farms, ranches, livestock operations, farmer cooperatives and other agribusinesses pose low risks for spills and are often seasonal in nature. In fact, data on oil spill on farms, cooperatives, and other agribusinesses is almost nonexistent. The Agency has failed to provide data or even anecdotal evidence of agricultural spills to justify such a resource-intensive rulemaking for America's farmers and ranchers. The risk of such spills from agriculture is extremely low and there is little to no evidence that providing greater flexibility through S. 496 will harm the environment.

We strongly believe S. 496 will bring much needed clarity to agriculture on the confusing requirements of the SPCC rule. Specifically, it would provide realistic threshold sizes for tank regulation at the farm level and allow more farms to self-certify thus saving time and money that would otherwise be spent in hiring Professional Engineers to develop and sign the SPCC plans.

The FUELS Act is common-sense legislation and we strongly encourage the Senate to support its passage as part of the Water Resources Development Act.

Sincerely,

CHARLES F. CONNER,
President & CEO.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Virginia.