

the rape and sexual assault reports, the university put a notice on their Web site and sent e-mails to students, faculty, and staff about the occurrences.

Kutztown University and Dickinson College have taken concrete steps to improve their responses, but much remains to be done. Congress cannot legislate a campus culture, but we can pass legislation to help institute the processes and procedures that will educate students in order to prevent intimate partner violence and provide support for victims who do come forward, which will encourage other victims to speak up and seek help.

Colleges and universities must do everything possible to protect students from violence and provide information about students' rights and the resources available to help them.

I urge my colleagues to join me in supporting the Campus Sexual Violence Elimination Act so that our children can go to college without fear and those who violate campus policies relating to intimate partner violence will be held accountable for their actions.

#### CLEAN WATER ACT JURISDICTIONAL EXPANSION

Mr. BARRASSO. Mr. President, I rise today to submit for the RECORD an article written by Bobbie Frank, executive director of the Wyoming Association of Conservation Districts and published on July 16, 2011, in the Wyoming Livestock Roundup. The article's title is "Muddy waters: EPA, Army Corps Seek to Define More Jurisdiction as Federal."

I have concluded, just as this article has, that the Clean Water Act, CWA, jurisdictional guidance being proposed by the Environmental Protection Agency, EPA, allows the U.S. Army Corps of Engineers and EPA to regulate waters now considered entirely under State jurisdiction. This unprecedented exercise of power will allow EPA to trump States rights, and vitiate the authority of State and local governments to make local land and water use decisions. This is particularly troubling when we have seen no evidence that the States are misusing or otherwise failing to meet their responsibilities.

Enormous resources will be needed to expand the CWA Federal regulatory program. Not only will there be a host of landowners and project proponents who will now be subject to the CWA's mandates and costs of obtaining permits, but an increase in the number of permits needed will lead to longer permitting delays. Increased delays in securing permits will impede a host of economic activities in Wyoming and across the United States. Commercial and residential real estate development, agriculture, ranching, electric transmission, transportation, energy development, and mining will all be affected, and thousands of jobs will be lost.

In May of this year, 19 Senators joined me in a letter to EPA expressing

our strong opposition to this guidance. I will continue to fight to protect our States from this Washington power grab.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I referred.

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

MUDDY WATERS: EPA, ARMY CORPS SEEK TO DEFINE MORE JURISDICTION AS FEDERAL  
(By Bobbie Frank, Executive Director, Wyoming Association of Conservation Districts)

The conservation districts in this state are definitely committed to watershed health and water quality work, and their commitment is evident through their actions: conservation district employees who are several months pregnant wade streams in the winter to collect water samples, and retired conservation district supervisors volunteer their time to help with water quality monitoring and implementing water quality management practices.

Many landowners, community leaders and homeowners have and continue to volunteer hundreds of hours working on watershed plans, and then they work hard to implement those plans. There is no shortage of dedicated and concerned citizens working to maintain and improve the water quality of this state, and every two years the Wyoming Association of Conservation Districts (WACD) publishes its "Watersheds Progress Report" to show all of the incredible efforts at the local level across Wyoming. The 2009 edition is available on our website.

Highlighting the dedication to water quality is important to recognize, in the context of this discussion, because, inevitably, when one starts debating the issue of regulatory jurisdiction—federal versus state—if one leans toward less federal intervention and regulation, then it is easy for others to try to paint one as anti-clean water. As one district supervisor put it, "The only conservation that matters is that which gets put on the ground."

In April 2011 the Environmental Protection Agency (EPA) published draft guidance that would replace previous agency guidance issued in 2003 and 2008, detailing modifications to which waters EPA and the Army Corps of Engineers (Corps) would regulate under the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act). Who should have the authority over water quality issues, the federal government or the respective states, continues to be a hot topic of debate. Key Supreme Court decisions have refined the EPA's and the Corps' authority over the regulation of certain types of waters.

In the past several years there have also been attempts in Congress to advance legislation to redefine "waters of the United States." These bills would have resulted in a definition that would have included a number of waters that are currently not subject to federal regulation, or are in a "gray" area. These attempts did not move forward. As a result, that which cannot be done through the appropriate processes, i.e. legislation and/or rules, apparently will be done through the development of "guidance."

The two primary decisions, the Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC) and Rapanos v. United States (Rapanos), resulted in restricting federal authority over certain types of waters.

First, the SWANCC decision removed from federal regulation isolated wetlands by nullifying the "migratory bird rule." In a nut-

shell, the agencies, via regulation, exerted jurisdiction over these types of isolated waters by arguing that isolated wetlands will have waterfowl in them that would fly to another state and land in another isolated wetland, hence there was interstate commerce occurring on these waters to render them under federal jurisdiction.

The other suit, Rapanos, resulted in what is argued by the agencies to be a complicated and unmanageable approach to determining jurisdiction. Many lauded the decision as a win for reining in the heavy hand of the agencies. In Rapanos, the court addressed CWA protections for wetlands adjacent to non-navigable tributaries, and issued five opinions with no single opinion commanding a majority of the court. The plurality opinion, authored by Justice Scalia, stated that "waters of the United States" extended beyond traditional navigable waters to include "relatively permanent, standing or flowing bodies of water." There is a lot more detail to this opinion, but suffice it to say, the outcome was additional limitations placed on federal jurisdiction.

A comparison of the December 2008 memorandum issued by EPA and Corps guiding agency personnel on which waters would be jurisdictional and this new proposed guidance, provides for some significant changes in what waters would be regulated. The agencies specifically state in the draft guidance: "However, after careful review of these opinions, the agencies concluded that previous guidance did not make full use of the authority provided by the CWA to include waters within the scope of the Act, as interpreted by the Court."

The 2008 guidance established a "significant nexus" standard, whereby the agency would have to determine on a fact-specific basis whether certain types of waters, such as wetlands, tributaries or traditional navigable waters, fell under federal jurisdiction. This significant nexus standard would contemplate the flow functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical and biological integrity of downstream traditional navigable waters. The significant nexus also included consideration of hydrologic and ecologic factors.

This 2011 draft guidance takes the same type of approach, but expands on the significant nexus approach by establishing that waters that are in "close proximity" or "proximate other waters" to traditional navigable waters will also fall under jurisdiction. Basically, the guidance establishes a watershed approach to determining significance. In essence, based on our analysis, most waters in a watershed draining to a "traditional navigable water" or interstate water, would ultimately meet the "significant nexus" test and be subject to federal regulatory oversight.

There is a list of certain types of waters that would "generally" not fall under federal jurisdiction. Note the term "generally." There is a potential that some of the specifically exempt waters, such as reflecting pools, ornamental waters, gullies, etc., could also be jurisdictional.

Also of import is the application of the above as it pertains to the different provisions of the Clean Water Act. The agencies acknowledge in the guidance that "although SWANCC and Rapanos specifically involved section 404 of the CWA and discharges of dredged or fill material, the term 'waters of the United States' must be interpreted consistently for all CWA provisions that use the term. These provisions include the section 402 National Pollutant Discharge Elimination System (NPDES) permit program, the section 311 oil spill program, the water quality standards and total maximum daily load

programs under section 303, and the section 401 State water quality certification process.”

This issue is not about whether our water resources should be protected or not, which is often the spin on this issue. It is about whether the authority to regulate certain types of waters should lie with the federal government or should be retained by the states. WACD’s comments reflect the opinion that, on those waters falling outside of the traditional “navigable,” interstate waters’ realm should be regulated by the states. It has been our experience that those closest to the issue are typically most knowledgeable and capable of commonsense, cost effective approaches to resource protection and management.

WACD and the conservation districts have a solid record of projects that do successfully protect water quality in a commonsense, cost effective approach that benefits all water users and the state. The EPA’s 2011 draft guidance document hinders our ability to continue this mission by oftentimes placing districts in a position of reacting to federally driven requirements and priorities versus the highest priority resource issues in our communities.

Thanks to Senator Barrasso for his diligent efforts on this issue. We appreciate his work to ensure that the federal agencies don’t try to evade the appropriate processes and expand their authorities.

#### ADDITIONAL STATEMENTS

##### REMEMBERING TOM WILLIAMS, JR.

• Ms. LANDRIEU. Mr. President, today I wish to remember a great man and a wonderful friend, Mr. Tom Williams, Jr. Mr. Williams passed away on June 21, 2011, in Scottsdale, AZ, and leaves behind his wife Gloria; son Tom Williams, III; daughter Nicol Williams-Pruitt; son-in-law Jason Pruitt; and grandson Nicolas Pruitt. To Mr. Williams’ family, please accept my condolences for your loss.

Mr. Williams and I met through a shared passion for the advancement of America’s small businesses. In fact, Mr. Williams started his own small business in 1982 in Oakland, CA, an accounting firm called Williams, Adley & Company. In the beginning, Williams and Adley were the only two employees, but over the next few decades, they grew to be a three-office firm with two locations in California and one in Washington, DC. The firm now boasts over 100 employees.

In addition to his professional success, Mr. Williams has been a champion for small business-friendly legislation. He was a leader in changing the size standards for the accounting industry and fought tirelessly to improve access for small accounting firms to government contracts. Similarly, my colleagues in the Senate may remember language in the Small Business Jobs Act mandating annual reviews of the accounting firm size standards, a provision suggested by Mr. Williams.

Mr. Williams was also a pillar in his community. He helped establish the San Francisco Chapter of the National Association of Black Accountants,

NABA, served in a number of NABA positions, including president, and was awarded their Small Business Entrepreneur of the Year Award. He was also an active member of the California Society of Public Accountants.

But perhaps the best description of Mr. Williams comes from the motto of the very company he created: “Good people, doing great things.” Mr. Williams, you were indeed a good person who did great things. I sincerely thank you for all of your contributions.●

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

#### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

#### MESSAGE FROM THE HOUSE

At 1:55 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1315. An act to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to strengthen the review authority of the Financial Stability Oversight Council of regulations issued by the Bureau of Consumer Financial Protection, to rescind the unobligated funding for the FHA Refinance Program and to terminate the program, and for other purposes.

H.R. 2551. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 2012, and for other purposes.

#### MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1315. An act to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to strengthen the review authority of the Financial Stability Oversight Council of regulations issued by the Bureau of Consumer Financial Protection, to rescind the unobligated funding for the FHA Refinance Program and to terminate the program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 2551. An act making appropriations for the Legislative Branch for the fiscal year ending September 30, 2012, and for other purposes; to the Committee on Appropriations.

#### MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 2553. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary:

Report to accompany S. 968, a bill to prevent online threats to economic creativity and theft of intellectual property, and for other purposes (Rept. No. 112-39).

By Mr. LEAHY, from the Committee on the Judiciary, without amendment:

S. 27. A bill to prohibit brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market.

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

S. 846. A bill to designate the United States courthouse located at 80 Lafayette Street in Jefferson City, Missouri, as the Christopher S. Bond United States Courthouse.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1406. A bill to designate the United States courthouse under construction at 510 19th Street, Bakersfield, California, as the Myron Donovan Crocker United States Courthouse; to the Committee on Environment and Public Works.

By Ms. SNOWE (for herself and Ms. CANTWELL):

S. 1407. A bill to amend title XVIII of the Social Security Act to establish accreditation requirements for suppliers and providers of air ambulance services, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN:

S. 1408. A bill to require Federal agencies, and persons engaged in interstate commerce, in possession of data containing sensitive personally identifiable information, to disclose any breach of such information; to the Committee on the Judiciary.

By Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. BROWN of Massachusetts):

S. 1409. A bill to intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending; to the Committee on Homeland Security and Governmental Affairs.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LAUTENBERG (for himself, Mr. TOOMEY, Mr. MENENDEZ, Mr. SCHUMER, Mrs. GILLIBRAND, Mr. CASEY, Mr. LIEBERMAN, Mr. BLUMENTHAL, Mr. WEBB, Mr. WARNER, Mr. REID, Mr. MCCONNELL, Mr. AKAKA, Mr. ALEXANDER, Ms. AYOTTE, Mr. BARRASSO, Mr. BAUCUS, Mr.