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10 N Post St Ste 305 | Spokane WA 99201-0705

Phone: 509.624.1158 | Fax: 509.623.1241  
E-mail: [nwma\\_info@nwma.org](mailto:nwma_info@nwma.org) | Web: [www.nwma.org](http://www.nwma.org)

May 18, 2011

Ms. Donna Downing  
Office of Water (4502-T)  
Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Mr. David Olson  
Regulatory Community of Practice (CECW-CO-R)  
U.S. Army Corps of Engineers  
441 G Street, N.W.  
Washington, D.C. 20314

Attn: Docket ID No. EPA-HQ-OW-2011-0409

**Docket ID No. EPA-HQ-OW-2011-0409**

**Re: Request for Extension of Comment Period on EPA and Army Corps of Engineers  
Guidance Regarding Identification of Waters Protected by the Clean Water Act**

Dear Ms. Downing and Mr. Olson:

The Northwest Mining Association (NWMA) requests a 90-day extension of the public comment period on the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers' (Corps) Proposed Guidance Regarding Identification of Waters Protected by the Clean Water Act. 76 *Fed. Reg.* 24479.

NWMA is a 116 year old, 2,000 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 42 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA's broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

NWMA members will be significantly and adversely affected by the proposed guidance, and we believe additional time for comment is warranted for several important reasons.

The proposed guidance, unlike previous guidance documents, will be used by the EPA and the Corps to interpret the term "waters of the United States" in the context of all programs

authorized under the Clean Water Act (CWA), including Section 404 discharges of dredged or fill material, the Section 402 National Pollutant Discharge Elimination System (NPDES) permit program, the Section 401 state water quality certification process, and Section 303 water quality standards and total maximum daily load programs. As such, this proposed guidance will pervade all stages of mining operations, and will have a substantial impact on the mining industry. The implications of this change alone are complicated enough to warrant an extension of the comment period.

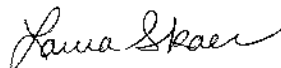
Furthermore, the agencies have stated they intend to finalize this guidance and then potentially perform a rulemaking in the future. We disagree with this approach and believe that it violates the requirements of the Administrative Procedure Act (APA). Given that the guidance will likely be finalized and applied in the field pending some potential future rulemaking, it is even more important to have sufficient time to comment. A 60-day comment period is insufficient given the scope and complexity of the proposal, as well as the fact that it will be applied immediately following the comment period, forming the basis of the future rulemaking.

Moreover, an extended comment period is particularly warranted in light of the numerous legal, scientific and economic considerations implicated by the proposal. For example, in support of the draft guidance, the agencies have provided two appendices: a ten-page discussion on the legal and scientific basis for particular guidance sections, and a complex, 44-page analysis of the indirect economic impacts associated with the proposed guidance. Additional time is needed for stakeholders to review and evaluate these complicated arguments and analyses.

Indeed, the EPA itself has estimated that the annual costs of implementing the guidance will be between \$87 million and \$171 million, and the EPA arrived at that number without taking into consideration permitting costs, the increased delays associated with expanded federal jurisdiction and the costs of new land use restrictions. Given the importance of the proposal, the public should be permitted the opportunity to thoroughly review and comment upon EPA's supporting documentation, including its lengthy economic analysis of the draft guidance.

In conclusion, the proposed guidance is intended to and will have a material impact on CWA permitting and enforcement nation-wide, and multiple industries and stakeholders will be subject to the new criteria set forth by the agencies. In light of the many important issues addressed by the proposal and the economic interests at stake, it is imperative that EPA and the Corps allow all interested parties to have sufficient time to provide meaningful and fully developed comments. NWMA therefore requests that the comment period be extended by 90 days until Sept. 30, 2011.

Sincerely,



Laura Skaer  
Executive Director