

**American Rivers ▪ Center for Biological Diversity ▪ Defenders of
Wildlife ▪ Earthjustice ▪ Environmental Defense Fund ▪ League of
Conservation Voters ▪ National Audubon Society ▪ National Wildlife
Federation ▪ Sierra Club ▪ The Wilderness Society**

July 23, 2009

The Honorable Harry Reid
Majority Leader
United States Senate
S-221 Capitol
Washington D.C. 20510

Honorable Daniel K. Inouye
Chairman
Committee on Appropriations
SH-722 Hart Senate Office Building
Washington, D.C. 20510

Re: Remove Anti-Environmental Rider from the Energy and Water Appropriations Bill

Dear Majority Leader Reid and Chairman Inouye:

We write with grave concerns about two anti-environmental "riders" included in the FY 2010 Energy and Water Development Appropriations bill for FY 2010. These provisions, included as Sections 115 and 116 referencing the St. Johns Bayou and New Madrid Floodway project in Missouri, are clearly attempts to interfere with the application of our nation's bedrock environmental laws, including the National Environmental Policy Act and the Clean Water Act. These provisions would obstruct compliance with a federal court order by rescinding FY 2009 funds the Corps intends to use to deconstruct structures and restore the habitat and the channel of the St. Johns River as ordered by the Court. We strongly object to this effort to undermine the protections provided by our nation's environmental laws and to obstruct compliance with judicial orders, and urge you to remove this rider from the bill.

The St. Johns - New Madrid project would have walled off and drained more than 30,000 acres of wetlands and roughly 80,000 acres of highly valuable floodplain spawning habitat for Mississippi River fish in southeastern Missouri. It would have drained more wetlands than are impacted by all the individual permits granted by the U.S. Army Corps of Engineers to all the nation's private individuals and companies in a single year. The U.S. Fish and Wildlife Service found the project "would cause substantial, irretrievable losses of nationally significant fish and wildlife resources, and greatly diminish rare and unique habitats in southeast Missouri." The Missouri Department of Conservation found the project "makes no more than a token effort to mitigate fish and wildlife losses." Internal Corps memos call it a "bad project, period" and "an economic dud[] with huge environmental consequences." In addition, the Corps' plan to close the gap at the lower end of the New Madrid Floodway fundamentally complicates and increases the risk of flooding of communities in the adjacent states of Illinois and Kentucky.

The attempt to obstruct a judicial order is particularly troubling. On a preliminary injunction motion, the Court ruled that plaintiffs were highly likely to prevail – as they ultimately did – but

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allowed the Corps to proceed with some initial construction at its own risk. To do so, the Corps was obligated to promise the Court to undo the initial damage its work created if the Court ultimately ruled against it. These sections of the bill would leave in place harmful damage to wetlands ruled illegal by the Court and violate the Corps obligations under the court's ruling in this case.

You have a long history of resisting the use of riders to undermine the enforcement of the nation's environmental laws, and we urge you to continue to ensure that all communities receive the full protection of those fundamental and vitally important legal requirements. We ask that the language related to the St. Johns Bayou and New Madrid Floodway project be removed from the Energy and Water Development Appropriations bill.

Sincerely,

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