



September 14, 2016

The Honorable Mitch McConnell
Senate Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Harry Reid
Senate Democratic Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Paul Ryan
Speaker of the House of Representatives
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Chuck Grassley
Chairman, Committee on the Judiciary
U.S. Senate
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
U.S. Senate
437 Russell Senate Building
Washington, D.C. 20510

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
2240 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
2426 Rayburn House Office Building
Washington, D.C. 20515

RE: *Stop Settlement Slush Funds Act Concerns*

Dear Congressional and Judiciary Committee Leaders:

The undersigned, whose members are state environmental regulatory agencies, law enforcement, and prosecutors, write to express concern with H.B. 5063, the *Stop Settlement Slush Funds Act* (the Act), which the U.S. House of Representatives passed last week, and with the Senate companion, S. 3050.

The Environmental Council of the States (ECOS) is the national non-profit, non-partisan association of state and territorial environmental agency leaders. The purpose of ECOS is to

improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States of America.

The Southern Environmental Enforcement Network (SEEN), Midwest Environmental Enforcement Association (MEEA), Northeast Environmental Enforcement Project (NEEP), and Western States Project each were created to support the effective enforcement of environmental laws at the state and local level, with a strong emphasis on criminal enforcement. Collectively called the Regional Associations, they are the premiere providers of environmental enforcement training to state and local personnel. They offer a broad range of basic, intermediate, and advanced training courses designed to meet the needs of each member of the environmental enforcement team. Dues paid by state agency members fund these Regional Associations. Since 2012, the only additional source of funding for the Regional Associations has been settlement agreements from state and federal civil and criminal cases. In the specific case of the Western States Project, some additional funding is derived from registration fees from attendees for select trainings. However, the long-term survival of Western States Project would unquestionably be in jeopardy if it were prevented from receiving settlement monies in the future.

Our collective concern stems from the fact that the Act would prohibit the United States government from enforcing “any settlement agreement” on behalf of the United States that directs any money to any third-party other than restitution payments for direct actual harm. If enacted into law, we are concerned that the Act would prevent state environmental agencies, state law enforcement agencies, state coastal restoration agencies, and other entities such as the Regional Associations, from receiving funding for and participating in supplemental environmental projects (SEP) and natural resource damages (NRD) projects.

Over many years, SEP funds have been used to benefit local communities by offering environmental violators the opportunity to mitigate the impacts from their adverse environmental actions by funding projects that improve, enhance and protect the local environment and community health, including providing training opportunities that are designed to increase compliance and prevent future violations. These projects are frequently funded and administered through payments made to state environmental agencies, state law enforcement agencies, state coastal restoration agencies, and other entities such as the Regional Associations, which then work with others, such as local governments, to help identify and pursue these important projects.

Similarly, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Oil Pollution Act (OPA), damages are recoverable where natural resources have been injured. Where possible, NRD funds are used to restore the injured resource. Where full restoration is not possible, NRD funds are used to protect and restore other natural resources, benefiting the communities where those natural resources are located. This Act could prohibit NRD funds from being used to restore and protect these natural resources.

Our organizations seek changes to this legislation to ensure that state agencies, and other entities such as the Regional Associations, are exempt from its prohibitions. We believe an unintended consequence of this Act is the loss of critical environmental and health benefits that local communities have relied upon for many years.

We acknowledge the importance of judicial accountability and oversight in settlement agreements, and are interested in participating in discussions with all stakeholders, and with you, on language that would advance the important state goals of environmental and community health improvement and protection, as well as environmental compliance and violation prevention.

We look forward to engaging further on this important issue. Our contact information can be found at www.ecos.org and www.regionalassociations.org.

Sincerely,

Alexandra Dapolito Dunn
Executive Director & General Counsel
Environmental Council of the States

Doreen A. Harr, MSLBE
Director, Bureau of Investigation, Office of Chief Counsel
Pennsylvania Department of Environmental Protection
Chair, Northeast Environmental Enforcement Partnership

Geary Allen
Executive Director
Southern Environmental Enforcement Network

James S. Triner
Executive Director
Midwest Environmental Enforcement Association

Lynn Cassidy
Executive Director
Western States Project