

United States Senate

WASHINGTON, DC 20510

September 30th, 2013

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Department of the Army
Office of the Assistant Secretary
108 Army Pentagon
Washington, DC 20310

Dear Assistant Secretary Darcy,

We are contacting you today regarding the September 12th, 2013 document entitled "Guidance Pertaining to Cooperative Joint Management Agreements and Leases with Cooperating Associations that Allow Retention and Expenditure of Fees Generated by Charging for the Use of USACE-Constructed Facilities". This guidance is the result of a decision to revisit the legality of existing cooperative agreements, and we share serious concerns regarding the purpose behind this review and manner in which it is being carried out.

As you know, the U.S. Army Corps of Engineers (USACE) operates 422 lake and river projects, providing recreational services for millions of our constituents. To aid in managing several of these projects, USACE has entered into partnerships with nonprofit entities, known as a cooperative associations (CA). The partnerships typically consisted of joint management arrangements where CA leased certain recreation sites from USACE and provided auxiliary services for these sites. In many cases, fees were collected from users in order to aid in the provision of those services and applied back to the maintenance and care of the facilities.

Yet on September 2013, USACE announced it believes these agreements are illegal, and that USACE must take over management of the sites immediately. The Guidance also mentions as an option for future management of these sites where CA will pay administration costs "using funds that were not derived from collections of receipts for use of facilities".

The fact of the matter is that many CA who have entered into such agreements are nonprofit. This type of management arrangement may not be an option for them. This is why many of these private groups only entered into these agreements with detrimental reliance on the legal interpretation by the Corps that these groups could their retain fees and put them towards site management.

Additionally, it appears the USACE Office of Chief Counsel made a determination that these agreements were illegal three years ago. In regards to agreements executed after that time, this bureaucratic mistake is unacceptable. In regards to agreements executed before that time, these entities should have been informed of this interpretation on the spot.

Our constituents are fed up with such regulatory uncertainty. The onus should not be on the individuals who enter into agreements with government agencies in good faith to be forced to

double check that the agency who should be an expert on the authorizing legislation empowering them to act is acting legally.

Further, public-private partnerships have the potential to save the government millions of dollars in the administration of different services. If these are the conditions private entities must suffer in order to enter into cooperative agreements, why would anyone contract with a government agency?

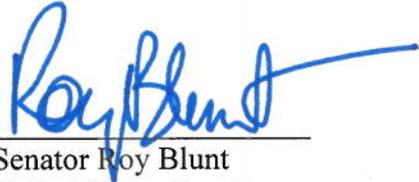
We ask that the USACE fulfill its end of the partnership by resolving this situation immediately and take action to prevent any potential disruptions to service and cost increases to CA and users of these recreation sites.

To that end, we ask that you provide information regarding this decision. First and foremost, we ask that you please provide us with the legal opinion from the USACE Office of the Chief Counsel explaining this new legal interpretation. Specifically:

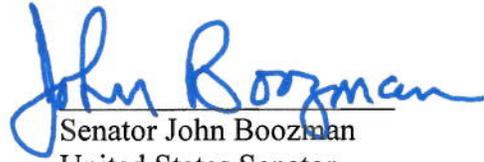
1. Was the legal authority to enter into the agreements vetted at the USACE Headquarters level prior to the agreements being signed?
2. On June 25th, 2010, the Office of the Chief Counsel issued a memorandum for the Chief of Operations & Regulatory Community of Practice regarding Leases and Cooperative Agreements with Cooperating Associations. This memorandum concerned a cooperative agreement between the Fort Worth District (SWF) and a cooperating Association. In it, the Chief Counsel stated "While we appreciate and understand the financial utility and benefit to the Government of the SWF Arrangement, we believe that it goes beyond the legal authorities presently in place". It then speaks to the governing statute, §460d-3 of Title 16 of the U.S. Code.
 - a. Was this guidance shared with Headquarters and District offices?
 - b. Was this guidance referenced when USACE Headquarters reviewed agreements executed after the fact?
 - c. Were there any cooperative agreements in place with similar fee arrangements before the guidance came out? If so, why were these parties not notified?
3. USACE has determined that 16 U.S.C. §460d-3 is applicable to these agreements. However this section makes specific reference to 4(i)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(i))- a section which has since been repealed.
 - a. What is the USACE legal interpretation of the validity and applicability of §460d-3 when 16 U.S.C. 4601-6a(i) has been repealed?
4. Does USACE believe that CA must return fees to the Treasury?
 - a. How will these costs be determined?
 - b. How will this be enforced?
5. Does the USACE believe the District office involved must return the fees to the Treasury for their budgets?

Thank you for consideration of our views. We appreciate your prompt attention to this matter.

Sincere Regards,

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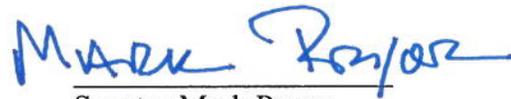
Senator Roy Blunt
United States Senator

A handwritten signature in blue ink that reads "John Boozman". The signature is written in a cursive style.

Senator John Boozman
United States Senator

A handwritten signature in blue ink that reads "Claire McCaskill". The signature is written in a cursive style.

Senator Claire McCaskill
United States Senator

A handwritten signature in blue ink that reads "Mark Pryor". The signature is written in a cursive style.

Senator Mark Pryor
United States Senator

A handwritten signature in blue ink that reads "Bob Casey, Jr.". The signature is written in a cursive style.

Senator Robert Casey
United States Senator