



THE SECRETARY OF COMMERCE

Washington, D.C. 20230

OCT 12 1999

The Honorable Thomas Bliley, Jr.
Chairman, Committee on Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter reflects the serious concerns of the undersigned Cabinet Secretaries over an amendment on natural resource damages that may be offered to H.R. 2580, scheduled for mark up by the Commerce Committee on October 13, 1999. On behalf of the Departments of the Interior, Agriculture, and Commerce, and the Clinton Administration, we strongly oppose this amendment to limit polluter liability for natural resource injuries.

We are pleased that a similar amendment was defeated by a bipartisan majority in the Finance and Hazardous Materials Subcommittee, and we hope that the full committee will oppose any amendment that would leave injured natural resources unrestored. If the proposed amendment were to become law, it would leave natural resources injured by hazardous substances unaddressed, leave the public uncompensated for losses resulting from private actions, increase costs to the taxpayer, increase the complexity of assessing natural resources damages, and increase litigation.

More specifically, the amendment could end restoration of some injured resources that are essential to the health of the Nation's ecosystems. The amendment limits restoration to reinstatement of "uses" of resources. This language could be interpreted to mean that trustees cannot address injured resources that are not directly used by humans but serve as critical fish and wildlife habitat or important food sources for animals. Trustees could be barred from restoring injured resources, such as endangered species or wilderness areas, that have enormous value even though they are protected from human use. Where restoration is permitted, it could take a form that does not actually improve the injured resources. For example, a destroyed forest could be considered "restored" by merely putting in a hiking trail somewhere else.

Also, while consideration of cost is an important element in restoration selection, the amendment could require the performance of a cost-benefit analysis for all restoration alternatives, which will force trustees back into conducting the controversial valuation studies that the Administration has worked so hard to move away from.

The amendment imposes restrictions on damages for the interim loss of injured resources that will prevent the public from obtaining full compensation for its loss.

The amendment could impose a new burden on trustees to demonstrate in each case that their claim does not have any potential overlap with any theoretical private claim. This could

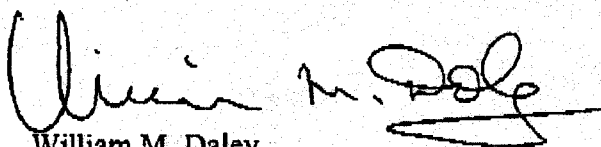
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generate substantial litigation given the complexity of the common law on public versus private rights, and could prevent the recovery of funds needed to effect full restoration.

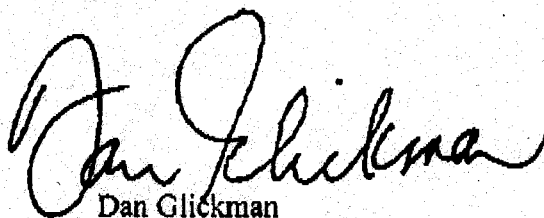
Moreover, if any change to the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is contemplated, it should first address the confusing statute of limitations to ensure that claims are brought in an orderly fashion after the scope of appropriate restoration is known.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

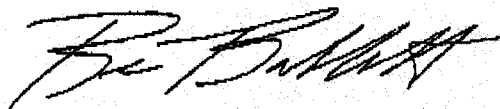
Sincerely,



William M. Daley
Secretary of Commerce



Dan Glickman
Secretary of Agriculture



Bruce Babbitt
Secretary of the Interior