

JAMES LANKFORD
5TH DISTRICT, OKLAHOMA

228 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2132

1015 NORTH BROADWAY AVENUE
SUITE 310
OKLAHOMA CITY, OK 73102
(405) 234-9900



Congress of the United States
House of Representatives
Washington, DC 20515-3605

REPUBLICAN POLICY COMMITTEE
CHAIRMAN

BUDGET COMMITTEE

OVERSIGHT AND GOVERNMENT
REFORM COMMITTEE
SUBCOMMITTEE

CHAIRMAN
ENERGY POLICY, HEALTH CARE AND ENTITLEMENTS

December 13, 2013

The Honorable Regina McCarthy
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

The Honorable Daniel Ashe
Director
US Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

Mr. Samuel Rauch III
Acting Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910

Mr. Gary Frazer
Assistant Director, Endangered Species
US Fish and Wildlife Service
1849 C Street, NW
Washington, DC 20240

Dear Administrator McCarthy, Director Ashe, Assistant Administrator Rauch, and Assistant Director Frazer,

I write to you today to respectfully request your attention to the proposed section 316(b) rule entitled "Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities" ("proposed rule"). I am concerned that consultations required under the Endangered Species Act ("ESA") in regards to this rule may have been applied in a way not intended by the law, and as a result could end in the imposition of new regulations beyond the scope of this rulemaking.

It is my understanding that the EPA determined that a formal ESA section 7 consultation with the Fish and Wildlife Service and the National Marine Fisheries Service (combined "the Services") is not needed for this proposed rule because it is unlikely to adversely affect listed species. However, it appears that the Services did not concur with this determination, as required under the rule, and the EPA is now in a formal section 7 consultation with these agencies.

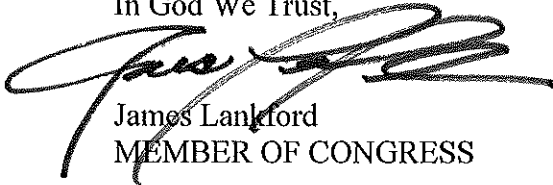
Under a section 7 consultation, the ESA requires the EPA and the Services to specifically examine whether an agency action would adversely affect listed species compared to the conditions for the species absent the agency action. The stated purpose of this proposed rule is to provide additional protections for aquatic organisms by placing more stringent standards on

cooling water intake structures at existing power plants than those already in place per existing state and federal laws. EPA is correct in stating that the proposed rule is unlikely to adversely affect species; in fact, the proposed rule adds additional protections that will likely improve conditions for species in the area of water intake structures.

I encourage the EPA and the Services to conclude the section 7 consultation expeditiously and allow the EPA to complete this rulemaking. The facts strongly support the Services resolving this matter by issuing concurrence with the original EPA finding of unlikely to adversely affect species. However, if the process has already been formally started the EPA and the Services should issue a "no jeopardy" biological opinion, reflecting that the proposed rule does not pose a danger to aquatic species.

Thank you for your careful consideration of this matter.

In God We Trust,

A handwritten signature in black ink, appearing to read "James Lankford", written over the printed name and title.

James Lankford
MEMBER OF CONGRESS