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FIRST DISTRICT OF GEORGIA

ENERGY AND COMMERCE COMMITTEE  
SUBCOMMITTEE ON HEALTH  
SUBCOMMITTEE ON ENVIRONMENT  
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To: Hon. R.D. James  
Assistant Secretary of the Army for Civil Works

From: Earl L. "Buddy" Carter *ELC*  
Member of Congress, First District of Georgia

Date: November 20, 2019

Re: Conference Call to Discuss Mining Issue in Savannah, Georgia

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Secretary James,

Thank you for making time to speak with me tomorrow morning regarding a mining project in my district.

My office has been engaged since October in trying to resolve an issue in which the Savannah District has interpreted two temporary mining roads for a proposed mining project (SAS-2019-00412) as being outside the statutory and regulatory exemptions for such roads.

I am appreciate of District Commander Col. Daniel Hibner's personal attention to this matter and assistance in attempting to resolve the disagreement. However, the District's interpretation continues to be outside the purpose, spirit, and language of both statute and regulation. It is also outside previous guidance issued by the District for similar projects prior to 2015. My fear is that that this represents a backslide to the regulatory stance which required your assistance in resolving last year.

Below, you'll find a brief background for this project as well as statutory and regulatory citations that reaffirm the position taken by my office and the applicant. I look forward to speaking with you hope you will be able to help provide regulatory relief to this long-delayed project.

**Background**

- On June 29, 2019 Resource and Land Consultants on behalf of Agricoast submitted a NWP#44 Pre-Construction Notification for mining activities on the subject tract.
- Agricoast proposed impacting just over a quarter acre of jurisdictional wetlands on a roughly 103-acre project site.
- My office became engaged in this project due to two troubling positions being taken by the Savannah District.

- One, involving of monitoring of secondary effects for a non-regulated activity, has since been resolved after a site visit by Col. Hibner.
- The second, involving two temporary mining roads, remains outstanding.
- The two roads would provide the only access to the proposed mining site, would be constructed and removed one at a time, and in place for no more than 36-months and likely less.
- Clean Water Act Section 404(f)(1)(E) explicitly exempts, “temporary roads for moving mining equipment.”
- Additionally, 40 CFR Part 232.3(c)(4) defines as exempt:  
*“temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that reach the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will otherwise be minimized.”*
- While the District acknowledges that the roads are temporary and will be used for mining, it has provided no justification for its interpretation that these roads fall outside the statutory and regulatory exemption for temporary mining roads.
- Additionally, this stance is contrary to the final rule jointly issued by the Corps and the Environmental Protection Agency repealing the 2015 Waters of the United States and the regulatory overreach contained therein.

Thank you, again, for your time and for your consideration of this important issue. I appreciate the progress made on this specific project since Col. Hibner’s site visit. Additionally, I understand the importance of the Corps’ role in protecting our natural resources when permitting projects. The Savannah District’s position in this case, however, is outside its statutory and regulatory bounds. Left unchecked, it could threaten the continued economic vitality of my district and many others.