

**Congress of the United States**  
**Washington, DC 20515**

May 25, 2017

The Honorable Jeff Sessions  
Attorney General of the United States  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Attorney General Sessions:

As Chairman of the House Committee on Agriculture and Chairman of the House Committee on the Judiciary (“Committees”), we have been following the case of *Duarte Nursery v. Army Corps of Engineers* very closely. As you may know, the interpretations of the Clean Water Act (CWA) and its farming exemptions are critical to farmers and ranchers across the nation and, thus, are of particular interest to the Agriculture Committee, especially given the Committee’s jurisdiction over agriculture generally. The Judiciary Committee’s oversight responsibilities include ensuring that the Justice Department enforces the law as Congress intended.

The prosecution of Mr. Duarte raises concerns that the Congressional intent behind the farming exemptions in the statute is misunderstood. Specifically, it is the Agriculture Committee’s view that even occasional farm activities, including grazing, qualify as “normal” farming under the statutory exemption, and also are part of an established operation for purposes of the exemption. Further, it is the Committee’s view that the activity at issue in this case constitute plowing for the purposes of the exemption.

To better understand the Department of Justice’s (DOJ) process for prosecuting potential violations of the CWA and in order to determine whether or not legislation is required to correct potential misinterpretations of the law, the Committees request the following information:

- What does the DOJ consider in determining whether or not to prosecute a violation of the CWA?
- Is it appropriate to seek reduced penalties where the alleged violation is based on a novel or strained interpretation of the underlying statutory authority?
- Have there been any cases where DOJ has entered into contingent settlements pending an appeal of a CWA case? If so, please describe the circumstances of those cases.

- Has DOJ ever declined on appeal to advance CWA arguments that were successful at the district court level? If so, please describe the circumstances of those cases.

If you have any questions about this request, please contact Jackie Barber of the Agriculture Committee staff at (202) 225-2171 and Dan Huff of the Judiciary Committee at (202) 225-3951.

Sincerely,

  
K. Michael Conaway  
Chairman  
House Committee on Agriculture

  
Bob Goodlatte  
Chairman  
House Committee on the Judiciary

cc: The Honorable Scott Pruitt, Administrator, U.S. Environmental Protection Agency