



November 29, 2013

Michael Froman, United States Trade Representative  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

**Regarding: Trans-Pacific Partnership Trade Agreement**

Dear Ambassador Froman:

The Delaware Riverkeeper Network is a nonprofit organization that works throughout the four states of the Delaware River watershed (New York, New Jersey, Pennsylvania and Delaware) in order to protect the communities and waterways of the Delaware River. We believe that healthy rivers and environments are critical for community health as well as vibrant trade. And we believe that the Trans-Pacific Partnership Trade Agreement, as is currently being negotiated, will undermine the ability of the United States to protect our healthy environments and honor the balance of power upon which this country was built.

As the TPP currently stands, it will undermine and override all federal, state and local environmental laws and regulations, as well as laws passed pursuant to interstate compacts which have been approved by Congress, including those to which the United States is a party. It is vital that a provision be included in the TPP which explicitly and expressly states that it will not interfere with or supersede any federal, state, local or interstate commission environmental protection laws, regulations or standards, and that all signatory nations, including the United States, will honor and hold harmless all environmental protection laws put in place by any and all federal authorities, state governments, local governments and/or interstate commissions (whether or not the U.S. Government is a party).

Such a provision is particularly important for the Delaware River which is the subject of environmental regulation by the four watershed states of New York, New Jersey, Pennsylvania and Delaware as well as the Delaware River Basin Commission, an interstate legal authority created by an interstate compact to which the federal government is a party. The Constitution and Congress have given these entities shared authority with the federal government over the health, safety and welfare of the Delaware River and the communities it supports. No Trade Agreement can or should supersede

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these grants of authority. An explicit reservation of legal authority in the TPP will ensure clarity, and avoid unnecessary environmental harms and legal battles. A TPP that fails to include this reservation of power should not be ratified.

Additionally, failing to include an explicit reservation of environmental lawmaking power will put the United States and all taxpayers at risk of having to pay hundreds of millions of dollars to foreign interests who deem environmental protection as a hindrance to their industrial operations. Finally, failure to include a specific provision that honors federal state, local and interstate compact environmental laws will be giving away to foreign governments and leaders the right to set law within our own country – an unacceptable legal or political outcome by all accounts.

I ask you to consider our request. Attached please find a memorandum providing additional detail and explanation for our request.

Respectfully,



Maya K. van Rossum  
the Delaware Riverkeeper



## **Detailed Memorandum of Support Request from the Delaware Riverkeeper Network Regarding the Trans-Pacific Partnership Trade Agreement**

**Allowing foreign interests to capitalize off the destruction of the U.S. environment for their own economic gain is economic colonization.**

And so, the Delaware Riverkeeper Network respectfully requests that a critical provision be added to the Trans-Pacific Partnership Agreement (TPP) currently under negotiation that will ensure the preservation of environmental protection laws critical for protecting the health and safety of our communities, and that will prevent legal conflicts with interstate compacts, including those to which the federal government is a party.

A failure of the TPP to include an explicit provision that preserves the environmental legal authorities of our federal, state, local and regional governments to ensure foreign industrial and/or corporate activities or interests do not harm the quality and health of our environment would result in nothing short of economic colonization and an unraveling of our country's legal foundations.

**The TPP needs to ensure the express preservation of environmental protection laws enacted to protect the health, safety and economic vitality of our communities and environments. The TPP needs to ensure protection of our communities, environment, food, water, air and economy do not become subservient to the economic interests of other nations and their industries.**

Environmental protection is not an impediment to healthy and vibrant trade – to the contrary, healthy environments support economic growth, trade and vitality while at the same time ensuring the health of our communities.

- ✓ Clean Water is needed for efficient port operations that transport goods and services;
- ✓ it is required to create the power and the water needed to support industry and product creation;
- ✓ it is vital for supporting recreation and ecotourism and all of the goods and services created and sold to support them;
- ✓ it is necessary to ensure healthy species that support commercial and recreational fishing operations and the food supplies they create;
- ✓ it is needed to support the birds, bats, bees and butterflies that support pollination of agricultural

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- crops;
- ✓ it is necessary to support the forests and healthy floodplains that prevent non-natural flooding and flood damages;
- the list is endless.

By way of specific example, a healthy Delaware River is not only the drinking water supply for 15 million people, including in the 1<sup>st</sup> and 5<sup>th</sup> largest cities in the United States – New York City and Philadelphia – but it also contributes \$22 billion in annual economic activity. Removing the Clean Water Act, Coastal Zone Management Act, Endangered Species Act, Resource Conservation and Recovery Act, Oil Spill Prevention Act as well as the other federal, state, local and regional legal protections the Delaware River benefits from will diminish the economic vitality and contributions of the River.

As written, if there is no express preservation of environmental legal authority for our federal, state, local and interstate lawmaking bodies, the indemnification provisions of the TPP will put the United States and all taxpayers at risk of having to pay hundreds of millions of dollars to foreign interests who deem environmental protection as a hindrance to their industrial operations. The record is filled with examples where foreign interests of one country used the investor-state dispute resolution mechanism being proposed for inclusion in the TPP to force approval of projects and operations harmful to the environment and public health while at the same time forcing the targeted nation to pay hundreds of millions of dollars for the inconvenience the corporate entity claimed environmental and community protection laws caused it.

Failing to include an explicit reservation of environmental lawmaking power could force the United States to pay hundreds of millions to foreign interests simply because our federal, state and local governments sought to protect the quality of their environment and the health of their community.

It is critical that the TPP expressly preserve the present and future environmental protections enacted in the United States and that the TPP trade agreement not make protection of our communities, environment, food and water subservient to the economic interests of other nations and their industries.

**The TPP needs to include an express reservation of legal authority for federal, state, local, and interstate bodies to implement and pass laws that protect the health, safety and/or quality of our environment and communities – failure to include such a provision will be taking power away from our Congress and sovereign states and handing it over to foreign powers.**

As the TPP currently stands, it will undermine and override all federal, state and local environmental laws and regulations, as well as laws passed pursuant to interstate compacts which have been approved by Congress, including those to which the United States is a party. It is vital that a provision be included in the TPP which explicitly and expressly states that it will not interfere with or supersede any federal, state, local or interstate commission environmental protection laws, regulations or standards, and that all signatory nations, including the United States, will honor and hold harmless all environmental protection laws put in place by any and all federal authorities, state governments, local governments and/or interstate commissions (whether or not the U.S. Government is a party).

Failure to include a specific provision that honors federal state, local and interstate compact environmental laws will be giving away to foreign governments and leaders the right to set law within our own country – it will be taking power away from our Congress and sovereign states and handing it over to foreign powers.

Attempting to include singular carve-outs for environmental protections rather than the blanket reservation of authority we suggest will be neither effective nor successful:

- The state of our environment, of science, of technology, and energy options is in constant flux and it is important that the authority to craft and carry out legal protections be able to keep apace.
- Additionally, it would be impossible for the U.S. Trade Representative to identify, evaluate and articulate every critical environmental protection enacted at the federal, state, local, or regional level that should be included.
- And recognizing the incredible volumes of science, information, data, analysis, input, legislative negotiation, and thoughtful decisionmaking that is invested in conceiving, crafting and passing every piece of environmental legislation and regulation that exists in this country, it is inappropriate to allow a few trade negotiators to be the arbiters of what environmental protections are expendable and can be left out of a TPP deal.

A blanket reservation of environmental authority for every level of government is necessary to preserve the integrity of our nation and the legal authorities upon which it has been built.

**The reservation of legal authority in the TPP should expressly preserve the authority to create and carry out environmental law making so as to ensure that it is not just laws currently in place that are preserved, but it is the legal authority to enact new legislation, or enact needed modifications to existing laws, in the future.**

A failure to preserve the authority to create and implement new environmental legal protections and to ensure that all present and future environmental protections are honored denies the ability to enact new and needed protections that become clear as the result of new science, new experiences and/or new and emerging technologies.

**It is important that in addition to protect federal environmental protection authority, other nations not be allowed to interfere with, undermine, void and/or violate the environmental and community protections that have been put in place at the state, local and/or interstate level – doing so will undermine the balance of power upon which our nation is built.**

The United States Constitution specifically honors the role of state and local governments in protecting the health, safety and welfare of our communities. Environmental protection in this nation is crafted on a shared balance of power at the federal, state, regional and local level. In some instances Congress has recognized the importance and value of interstate cooperation for addressing critical issues – so much so that it has specifically approved and even become a party to interstate commissions formed to achieve important public purposes that can best be achieved via such cooperation. Protecting this balance of power is essential for the proper implementation of our Constitution, federal and state relations, and the protection of our environment and U.S. citizens, residents and industries. Actions and decisions that affect this balance of power have ramifications far beyond the trade negotiations of the TPP.

**A provision that specifically protects state, local and interstate compact legal authorities is vital for protecting the health, safety and welfare of our communities, including the quality of our drinking water, the safety of our food, and the needs of our communities.**

In the United States there is special recognition of the importance and power of localized attention to environmental matters – i.e. that better laws and regulations come from the more informed knowledge of special features, waterways, community needs and values that happens at the state, interstate and local level.

For example, the Delaware River Basin Compact was formed in response to the competing state and community needs for healthy and abundant Delaware River water to support the drinking water and other needs of four states (New York, New Jersey, Pennsylvania and Delaware). Until the creation of the compact and its implementing body - the Delaware River Basin Commission (DRBC) - the water wars between the states were so great that they required Supreme Court intervention. The Delaware River Basin Compact provided the legal framework and decisionmaking body that since 1963 has ensured the needs of all four watershed states, as well as the federal interests within the Delaware River watershed, have been heard, honored and met.

A federal trade agreement such as the TPP that would allow foreign interests to overrule the decisions of the DRBC or the four participating states puts in the hands of these same foreign interests and governments the fate of the drinking water for 15 million people, including the residents of New York City, Philadelphia, Trenton, Wilmington and other communities large and small, as well as the quality of the food the river provides, and the \$21 billion of goods, services, economic revenue and jobs the Delaware supports and provides.

**The Trade Representative for the United States should not leave uncertainty in our trade relations and so should ensure the TPP includes an explicit statement honoring the environmental legal authority of our federal, state, local and interstate lawmaking bodies.**

Failure to make it clear that the TPP will leave in full force and affect the legal authority for present and future environmental protection laws of all federal, state, local and interstate bodies will open up a legal can of worms. Such a provision is particularly important for the Delaware River which is the subject of environmental regulation by the four watershed states of New York, New Jersey, Pennsylvania and Delaware as well as the Delaware River Basin Commission, an interstate legal authority created by an interstate compact to which the federal government is a party. The Constitution and Congress have given these entities shared authority with the federal government over the health, safety and welfare of the Delaware River and the communities it supports. No Trade Agreement can or should supersede these grants of authority. An explicit reservation of legal authority in the TPP will ensure clarity, and avoid unnecessary environmental harms and legal battles.

Not only would there be the immediate and direct legal ramifications resulting from a trade agreement that failed to preserve the integrity of our environmental protection legal system, but it would create a whole new generation of legal battles seeking to answer the question of how the TPP affects each and every interstate compact that exists in the United States.

**For all these reasons, the Delaware Riverkeeper Network respectfully urges you to ensure the TPP includes a provision that explicitly and expressly states that it will not interfere or supersede any federal, state, local or interstate commission environmental protection laws, regulations or standards (those of the present or future), and that all signatory nations, including the United States government will honor and hold harmless all environmental protection laws put in place, now or in the future, by any and all elements of the U.S. Federal government and by any and all state governments, local governments and/or interstate commissions (whether or not the U.S. Government is a party).**

Respectfully,



Maya K. van Rossum  
the Delaware Riverkeeper  
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