

September 28, 2012

Mr. Chad Whiteman
Office of Information and Regulatory Affairs
Office of Management and Budget
The White House
Washington, D.C. 20500

Email: cwhiteman@omb.eop.gov

Dear Mr. Whiteman:

The Nature Conservancy is writing to ask that you withhold approval of the proposed final rule sent to the Office of Management and Budget by the Environmental Protection Agency (EPA) that would include a particular species of plant – *Arundo donax* – as meeting criteria for qualifying under the renewable fuel standard program.

During an earlier stage of this process, the Conservancy and others submitted comments to EPA Jackson opposing this proposed action on the grounds that it violates Executive Order 13112. Specifically E.O. 13112 requires EPA to consider whether its actions are likely to cause or promote the introduction and spread of invasive species in the United States. While this rule would approve renewable fuel pathways for a plant species listed as noxious weed and/or widely considered invasive in the United States, EPA has not taken the action required by the Executive Order.

Executive Order 13112, signed by President Clinton on February 3, 1999, requires federal agencies, *inter alia*, to: “not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.”ⁱ

The Order creates an explicit obligation for EPA to identify actions that may affect invasive species. Issuance of a regulation constitutes an agency action, and EPA must therefore consider whether it will affect the status of invasive species. An action that may affect the status of invasive species triggers EPA’s obligation not to authorize or carry out the action without first applying its guidance to determine whether the action’s benefits clearly outweigh its risks.

We ask that you ensure that, before finalizing this final rule, EPA redresses its earlier noncompliance with Executive Order 13112 by consulting widely with the National Invasive

Species Council and other experts as to the effects of this rule on invasive species introduction. After such broader consultation and consideration, EPA should then revise the rule to exclude invasive species or, at a minimum, require effective steps to mitigate the risk that invasive species will be introduced or spread as a result of the rule that would result in the benefits of the rule clearly outweighing the costs.

In our earlier comments, we noted that biofuel producers are more likely to invest in the cultivation, harvest, and processing of biofuel feedstocks that are approved and can generate RINs. Indeed, we learn from the mediaⁱⁱ that the profitability of The N.C. Biofuels Center (a proposed \$170 million biofuel refinery in eastern North Carolina) depends on two factors: 1) a supply of at least 100,000 tons of arundo a year; and 2) a decision from the Environmental Protection Agency classifying arundo as an energy crop for making high-grade ethanol. Such premium biofuels are currently not commercially available and are expected to command prices as much as \$1 more per gallon than conventional ethanol.

Eastern North Carolina falls within temperature ranges conducive to growth and spread of *Arundo*. It is of great concern to us that the proposed large-scale plantings in this region to supply the proposed plant will almost inevitably lead to the species' escape and spread. Small segments of the grass can establish new populations. Those segments can easily be transported by wind or water, for example by the many hurricanes that occur in the area. The many waterways in eastern North Carolina provide highly invasive habitats for *Arundo donax*.

Giant Reed (*Arundo donax*)

The invasiveness of *A. donax* is well known and documented in the United States and internationally (Gordon et al. 2011; Buddenhagen et al. 2009; Gassó et al. 2009; Barney and DiTomaso 2008). *A. donax* is known to be an invasive plant in riparian ecosystems in many warm temperate and subtropical areas of the world (GISD 2007). As detailed in one of the rule's supporting documents (McWilliams 2004), the plant is invasive in warmer U.S. coastal waters from Maryland to California and Hawaii (Rieger and Kreager 1989; Neill and Giessow 2001; Yang, Everitt and Goolsby 2011).

Based on these impacts, at least four states have determined that *A. donax* is a noxious weed and should be excluded from the state and eradicated wherever found. The species is also on invasive plant and noxious weed lists in Georgia, South Carolina, Tennessee, and Virginia (Miller et al. 2004).

In addition to legal restrictions on the cultivation and trade of giant reed, states and other federal agencies are actively undertaking costly *A. donax* control projects. It is counter-productive for the EPA to provide a mechanism for the large-scale distribution of a plant species while states and other Federal agencies are working on mechanisms for the control (and hence reduction) of the same species.

The fact that *Arundo* is currently planted in North Carolina and elsewhere as an ornamental does not allay our concern that large-scale plantings across the landscape will almost inevitably lead to its escape and spread. Small segments of the grass can establish new

populations. Those segments can easily be transported by wind or water, for example by the many hurricanes that occur in the area.

Proponents of use of *Arundo* claim such plantings will serve a second function, bioremediation of swine effluent sprayed on fields. However, current scientific data indicates that the crop currently used for this purpose, coastal Bermuda grass, is four times more efficient in absorbing the nitrogen pollution from the soil. Encouraging farmers to switch to *Arundo* could expose them to violation of the Clean Water Act and significant fines if the new crop fails to prevent nitrogen runoff into surface waters.

We understand the importance of the role that biofuels play in the Country's overall energy policy. However, biofuel development should not come at the expense of the environment, other agencies, or landowners and federal and state agencies that are actively controlling invasive species.

We suggest that you instruct the EPA to follow the recommendations contained in the August 2009, white paper, "Biofuels: Cultivating Energy, not Invasive Species," that was published by the National Invasive Species Council's Invasive Species Advisory Committee (ISAC). These recommendations provide useful guidance to Federal agencies to consider when developing biofuel policy, such as selecting species and cultivars with low invasion risk and establishing eradication protocols for rotational systems and abandoned plantings.

Until the rule includes a public determination, made pursuant to agency guidance, that its benefits clearly outweigh the associated potential harm caused by invasive species, or includes effective measures to avoid and/or minimize the risk of harm, we urge you to withhold approval of this proposed final rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmie Powell". The signature is fluid and cursive, with a large initial "J" and "P".

Jimmie Powell
Senior Policy Advisor
The Nature Conservancy

References:

- *Barney JN & Ditomaso JM (2008). Nonnative species and bioenergy: are we cultivating the next invader? *BioScience* 58: 64-70.
- * Buddenhagen CE, Chimera C & Clifford P (2009). Assessing biofuel invasiveness: a case study. *PlosOne* 4(4): e5261.
- *Gassó N, Basnou C & Vilà M (2010). Predicting plant invaders in the Mediterranean through a weed risk assessment system. *Biol. Invasions* 12:463-476.
- *Gordon DR, Tancig KJ, Onderdonk DA, Gantz CA (2011). Assessing the invasive potential of biofuel species proposed for Florida and the United States using the Australian Weed Risk Assessment. *Biom Bioener* 35: 74–79.
- *McWilliams, J (2004). *Arundo donax*. In: Fire Effects Information System, [Online]. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory (Producer). Available: <http://www.fs.fed.us/database/feis/>.
- *Miller, JH, Chambliss EB & Barger CT (2004). Invasive Plants of the Thirteen Southern States. Available: <http://www.invasive.org/south/seweeds.cfm>.
- *Rieger, JP & Kreager, A (1989). Giant reed (*Arundo donax*): a climax community of the riparian zone. Proceedings of the California Riparian Systems Conference, 22-24 September 1988, Davis, California, USA. (technical coordinator D.L. Abell), pp. 222-225. USDA Gen. Tech. Report PSW-110.
- *Yang, C, Everitt JH & Goolsby JA (2011). Mapping giant reed (*Arundo donax*) infestations along the Texas-Mexico portion of the Rio Grande with aerial photography, *Invasive Plant Science and Management* 2011 4 (4), 402-410.

ⁱ EO 13112 § 2(a)(3) (1999).

ⁱⁱ 'Miracle' crop could invade like kudzu. Published: September 26, 2012. By JOHN MURAWSKI --- The News & Observer (Raleigh, N.C.)