



April 4, 2007

Dear Member of Congress:

The members of the Waters Advocacy Coalition (WAC) write to alert you to the impending introduction of legislation that would greatly expand the regulatory reach of the Clean Water Act (CWA) to the detriment of U.S. economic growth and future wetlands protection. Rep. James Oberstar (D-MN), Chairman of the House Transportation and Infrastructure Committee, is now soliciting cosponsors for the “Clean Water Authority Restoration Act” (CWARA) that he will introduce in the coming weeks. We strongly urge you not to cosponsor or support this legislation.

Under this proposal, the regulatory reach of the CWA would undergo its greatest expansion since the law took effect in 1972. The stated goals of the CWARA are to “restore” the original intent of the CWA and to provide “certainty” to the regulated community. Unfortunately, the legislation does neither. Instead, it would grant the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers federal regulatory authority over all “intrastate waters.” Such a proposal would move the CWA beyond protecting wetlands and waterways and transform it into a vehicle for regulating virtually every wet area in the nation, from ditches to gutters to possibly even groundwater. This is far from CWARA’s goal of “reaffirming the traditional scope and clear purpose of the Clean Water Act.” Instead of creating regulatory certainty, replacing “navigable waters” with a new definition would result in significant litigation and may not even stand up to future legal challenges.

Contrary to the stated objective of the CWA to preserve States’ authority over their own waters, the CWARA would displace state and local jurisdiction over land and water use. This shift in authority would result in an unprecedented increase in federal regulatory authority, imposing significant administrative burdens on all levels of government. At the federal level, the CWARA would produce permitting delays and increased costs, thus impeding a host of economic and governmental activities, including commercial and residential real estate development, agricultural production, paper production, electric transmission, transportation, and energy and mineral production. Currently the backlog of permit requests is approximately 15,000 to 20,000, and the increase in required permits caused by CWARA would necessitate enormous resources to broaden and defend the expanded federal regulatory program.

Additionally, the legislation is not necessary to protect vital wetlands and waterways. These important ecological resources are already protected under the United States Supreme Court’s 1985 unanimous decision in *United States v. Riverside*

*Bayview Homes*, which the Court reaffirmed in its recent decisions in *SWANCC* and *Rapanos*. Similarly, the Supreme Court in *Rapanos* unanimously rejected arguments that CWA jurisdiction is limited to traditional navigable waters. Therefore, following that case it is clear that the agencies can regulate beyond navigable-in-fact waters. Moreover, the unifying theme of all the Justices in *Rapanos* was not to amend the CWA, but rather that the Corps of Engineers and EPA should issue new regulations. As stated in the dissenting opinion of Justice Breyer in *Rapanos*, and as echoed by Chief Justice Roberts and Justice Kennedy, the “Army Corps of Engineers [should] write new regulations, and speedily so.”

In conclusion, WAC members call on Congress to preserve the traditional power of states over land and water use and avoid unnecessary alterations to the regulatory reach of the CWA. WAC is committed to conserving and restoring the nation’s water resources and believes this can be achieved without a dramatic expansion of the CWA. WAC urges you to consider the appropriate protections already afforded waters of the United States under the CWA, and reject the unnecessary and unprecedented federal expansion proposed in the CWARA.

Sincerely,

***The Waters Advocacy Coalition***

American Farm Bureau Federation  
American Forest & Paper Association  
American Road and Transportation Builders Association  
Associated General Contractors of America  
CropLife America  
Edison Electric Institute  
Foundation for Environmental and Economic Progress  
International Council of Shopping Centers  
National Association of Counties  
National Association of Home Builders  
National Association of Industrial and Office Properties  
National Association of Manufacturers  
National Cattlemen's Beef Association  
National Corn Growers Association  
National Mining Association  
National Multi Housing Council  
National Stone, Sand and Gravel Association  
Responsible Industry for a Sound Environment