



June 12, 2009

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable James Inhofe
Ranking Member
Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Ranking Member Inhofe:

The Senate Environment and Public Works Committee may in the near future take up consideration of S. 787, the “Clean Water Restoration Act”. It is our understanding that during mark-up of the legislation members may offer amendments that attempt to address concerns raised about the underlying bill. On behalf of the undersigned organizations, we respectfully request your opposition to S. 787.

As introduced, S. 787 would remove any bounds from the scope of Clean Water Act jurisdiction, so that the regulatory reach of the Act would extend to all water, anywhere, from farm ponds, to storm water retention basins, to roadside ditches, to desert washes, to streets and gutters, even to a puddle of rainwater. For the first time in the 36-year history of the Act, activities that have no impact on actual rivers and lakes would be subject to full federal regulation. Indeed, by applying the Act to “all interstate and intrastate waters,” S. 787 leaves no water unregulated, not even dry land that may have standing water following a rain event. As a consequence, S. 787 would vastly expand the range and number of activities that require permits – affecting farmers, ranchers, many waste treatment systems, new home and road construction, commercial development, energy development, and ongoing U.S. manufacturing activity. Not only would many activities not previously regulated require federal permits, those permits would be subject to challenge in federal court, delaying or halting these activities to the detriment of our economy.

Any amendment which retains the basic premise of S. 787 by deleting the term ‘navigable’ from the Act, then adding a few exemptions is an unacceptable starting point for legislative compromise. The exemptions that would be required would by no means rein in the extraordinary expansion of federal jurisdiction that would occur once this fundamental alteration is made in the law. The list of exemptions needed to accomplish that goal would be endless. For example, the widely circulated Baucus amendment recognizes the breadth of the expansion of federal jurisdiction over private property by adding a finding to S. 787 to say that the Act does not establish any new right of access to private property *for recreational purposes*. Recognizing that findings do not have the force of law, nothing in the bill addresses the fact that both the amendment and S. 787 as introduced would give federal regulators (and those who would use citizen suits to challenge an activity) the right to control private property. Moreover, by leaving the basic structure of S. 787 in place, Federal and state permitting programs will grind to a halt under the permitting burden created by these amendments to the Clean Water Act.

Many interests have tried to address the over-regulation created by S. 787. However, if the goal is to avoid over-regulation then the solution is to forgo the extraordinary expansion of federal jurisdiction in the first place. The undersigned organizations fully support the protection of navigable waters of the United States. We also fully understand that, to achieve that goal, we need to protect rivers and

streams that flow to navigable waters. These protections are provided under current law. If additional waters need to be protected, it would be far better to identify those waters, and the federal interest in protecting them, and then make targeted amendments to the Clean Water Act, or other appropriate federal law, to protect that federal interest.

For all the reasons stated above, we respectfully request you to reject S. 787.

Sincerely,

American Farm Bureau Federation®
American Forest & Paper Association
American Iron and Steel Institute
American Road and Transportation Builders Association
Associated General Contractors of America
CropLife America
Edison Electric Institute
The Fertilizer Institute
Foundation for Environmental and Economic Progress
Industrial Minerals Association-North America
International Council of Shopping Centers
NAIOP, the Commercial Real Estate Development Association
National Association of Home Builders
National Association of Manufacturers
National Cattlemen's Beef Association
National Council of Farmer Cooperatives
National Mining Association
National Multi Housing Council
National Pork Producers Council
National Stone, Sand and Gravel Association
Public Lands Council
Responsible Industry for a Sound Environment
Southern Crop Production
United Egg Producers
Western Business Roundtable

cc:

Members of the Committee on Environment and Public Works
Senator Russell Feingold