

June 17, 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:

It is our understanding that the Senate Environment and Public Works Committee plans to consider and possibly mark-up S. 787, the "Clean Water Restoration Act". The undersigned agricultural and conservation organizations want you to be aware of our views and concerns with respect to this bill and various amendments to it that have been discussed over the last several weeks.

We share the goal of restoring and protecting water quality, and we acknowledge and appreciate the serious efforts that have been made by several members of this committee to address some of the concerns we have raised. A number of outside groups have exerted, and continue to exert, enormous pressure in an effort to enact a fundamental change in the Clean Water Act. While we disagree with these groups' characterizations of the law pre-SWANCC, we recognize the tremendous political pressure that is being brought to bear on members, and we are grateful for the willingness of many Senate offices to listen to our concerns.

At this time, however, we cannot support S. 787 in its original form nor any of the proposed substitutes that have been circulated publicly.

Our core concern lies at the heart of the bill, which removes the term "navigable" from the definition of waters of the United States under the Clean Water Act. This term has been part of the Act since its inception in 1972, and its use in predecessor water legislation stretches back well over 100 years. It is a term that attempts to delineate under the Constitution the appropriate scope of federal jurisdiction, including where such jurisdiction ends and where state and local jurisdiction begins. It is a term that has needed refinement and definition through the legal process and there is an extensive legal record since 1972, most recently in the context of two Supreme Court decisions that attempted in our view simply to give navigable appropriate meaning.

This bill, by removing the term "navigable", does not in our view reduce confusion about the scope and limits of federal jurisdiction. Rather, it simply introduces a new line of confusion over how to interpret the Commerce Clause in this context, and will invariably lead to a whole new generation of litigation. The farmers and ranchers that make up our organizations see no value in such an effort, particularly when S. 787 expands federal water jurisdiction to the drainage ditches and storm water management structures on our farms and ranches. Such an expansion is not needed to effectively work with our industry to ensure we are taking appropriate steps to protect the water leaving our farms so that waters of the United States are protected and the goals of the Act met.

We value clean water, and support the goal of restoring and protecting the waters of the United States. In this regard, we believe that the most productive discussion at this point would explore the

specific, actual and real bodies of water and aquatic systems that today cannot meet this goal under the Act, absent the changes sought in S. 787 and related amendments. We ask that instead of moving this particular bill or an amended version of it, the committee work with us and other members of the regulated community in a concrete way that will go beyond discussions of general categories of waters. These discussions should involve specific bodies of water that either are not or cannot be protected today, where they are and how the current Act fails to protect them. Such a factual context will lead to solid and grounded policymaking that can be linked directly back to the federal water goals that our farmers and ranchers share with the sponsors and supporters of this bill.

Sincerely,

Agricultural Retailers Association
American Farm Bureau Federation
American Soybean Association
American Sugarbeet Growers Association
American Sugar Cane League
CropLife America
Irrigation Association
National Agricultural Aviation Association
National Alfalfa & Forage Alliance
National Association of Conservation Districts
National Barley Growers Association
National Cattlemen's Beef Association
National Chicken Council
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Milk Producers Federation
National Pork Producers Council
National Sorghum Producers
National Sunflower Association
National Turkey Federation
Public Lands Council
The Fertilizer Institute
United Egg Producers
United Fresh Produce Association
USA Dry Pea & Lentil Council
USA Rice Federation
US Canola Association
US Rice Producers Association
U.S. Beet Sugar Association
Western Growers