



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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May 11, 2009

The Honorable Barbara Boxer  
United States Senate  
112 Hart Senate Office Building  
Washington, DC 20510

Chairwoman Boxer:

The National Association of REALTORS® opposes S. 787, the “Clean Water Restoration Act.” This legislation would expand – not restore – the scope of the Clean Water Act (CWA) to include all U.S. waters, increasing regulation and litigation in an already struggling real estate sector, which is vital to the nation’s economic recovery.

S. 787 amends the CWA by replacing the term “navigable waters” with “waters of the United States” defined as “all... intrastate waters ... to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.” Simply substituting terms will not resolve issues over which waters are subject to federal regulation or reduce the litigation that culminated in Supreme Court decisions in 2001 and again, in 2006. However, introducing the terms “activities” and “legislative powers of Congress” could prompt additional litigation as legal arguments shift from defining which waters are navigable to which activities are regulate-able, and attorneys test the outer reaches of federal authority under the Act.

While switching nebulous terms does not add clarity, the bill does clearly delete the word “navigable” from the definition of federal waters. One could argue that “navigable” is the one term that limits EPA authority under the CWA. Without this important limiting principle, the federal government’s jurisdiction could encompass all non-navigable waters, including isolated ponds, ditches, and intermittent/ephemeral streams. If owners were to discover one of these newly included waters on their property, S. 787 would force those owners to obtain federal permits to carry out daily land management activities. With the real estate market already down, the last thing that we need is government regulation that would diminish property values further.

Again, NAR opposes S. 787, and urges all senators to vote “no” when the bill is considered in committee.

Sincerely,

Charles McMillan, CIPS, GRI  
2009 President  
National Association of REALTORS®