



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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October 14, 2009

The Honorable Jim Oberstar
Chairman, House Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

The Honorable John Mica
Ranking Member, House Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

Chairman Oberstar and Representative Mica:

On behalf of the 1.1 million members of the National Association of REALTORS® (NAR), thank you for holding a hearing on “The Clean Water Act after 37 years.” We appreciate this opportunity to share the Realtor® community’s view on the enforcement of clean water programs.

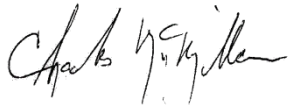
Enforcement is always a critical component of implementing federal laws. However, deleting “navigable” from the definition of U.S. waters will not help the Environmental Protection Agency (EPA)—or states to which the Agency has delegated authority—enforce the Act. NAR strongly believes this is the one term preventing federal agencies from asserting jurisdiction over all non-navigable waters, including isolated ponds, ditches and intermittent/ephemeral streams. Removing that term will simply expand jurisdiction, further complicating enforcement efforts. It will not help EPA or states prioritize clean up of waters, which from our perspective, has been the greatest obstacle to effective enforcement.

For the same reason, we have opposed S. 787, “Clean Water Restoration Act” (Feingold, D-WI) as reported by the Senate Environment and Public Works Committee. The bill would replace “navigable waters” with another phrase “waters of the United States” defined as “all... intrastate waters, including ... all tributaries ... and all impoundments of the forgoing.” It does introduce findings (but only findings) and potentially conflicting rules of construction that the authors believe would clarify their intention to restore the scope of the Clean Water Act. However, codifying a regulatory definition without reference to the U.S. commerce clause or rewinding the clock to a time when federal agencies tried to regulate waters based on the presence of migratory birds or a connection via drainage ditch will not add clarity. Any legislation that begins by substituting one nebulous phrase with another is not a workable approach.

If the goal is to improve enforcement, the best way to do that would be to provide the EPA and states with the resources to fully carry out statutory programs. Due to the downturn in the economy and tax revenues, states have been struggling to do more with fewer resources. With focus shifting to non-point sources and the Clean Air Act, EPA has not been able to provide the timeliest guidance and assistance that state water programs could use in order to fully carry out all of the programs they have been delegated by EPA.

Let us not lose sight of the significant strides made by EPA, states, industry and other citizens working together in improving the quality of our nation's streams and lakes. As a result, more waters are closer -- today more than ever before -- to one day achieving statutory goals. While we agree there is always more to be done, deleting the term "navigable" and thereby expanding non-tidal permitting authority under the Act will not help with those efforts. Thank you again for having this important hearing.

Sincerely,



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

cc: Members of the House Transportation and Infrastructure Committee