



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

500 New Jersey Avenue, N.W.  
Washington, DC 20001-2020  
202.383.1194 Fax 202.383.7580  
[www.realtors.org/governmentaffairs](http://www.realtors.org/governmentaffairs)

Vicki Cox Golder  
CRB  
*President*

Dale A. Stinton  
CAE, CPA, CMA, RCE  
Chief Executive Officer

GOVERNMENT AFFAIRS DIVISION  
Jerry Giovaniello, Senior Vice President  
Gary Weaver, Vice President  
Joe Ventrone, Vice President  
Jamie Gregory, Deputy Chief Lobbyist

May 4, 2010

The Honorable Jim Oberstar  
Chair, House Committee on Transportation and Infrastructure  
2165 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Oberstar:

On behalf of the 1.1 million members of the National Association of REALTORS®, I am writing to express concerns with H.R. 5088, “America’s Commitment to Clean Water Act.” While we appreciate the revisions to the legislation since last Congress, the bill would delete “navigable waters” and replace it with a broader definition of U.S. waters, which are subject to federal Clean Water Act permits.

H.R. 5088 would replace the term “navigable waters” with “waters of the United States,” defined as “...all interstate and international waters...[and] all other waters, the use, degradation, or destruction of which does or would affect interstate or foreign commerce, the obligations of the United States under a treaty, or the territory or other property belonging to the United States.” This bill’s definition includes all impoundments and tributaries of these waters but excludes prior converted croplands and waste treatment systems. There is no longer reference to “all intrastate waters” or “activities affecting these waters” to the “fullest extent” of the Constitution which were terms included in the previous legislation.

While we applaud the changes which could reduce litigation, the bill would offset any improvements by authorizing federal regulations of waters on private lands based on treaty obligations (including presence of birds under the Migratory Bird Treaty); impacts to federal lands or property; waters (not just wetlands) adjacent to defined waters; as well as all tributaries and impoundments of these waters. Without the term “navigable” which limits federal jurisdiction, it would ultimately be up to the U.S. government and courts to determine the outer limits on agency discretion which exacerbates uncertainty in the real estate market.

For these reasons, NAR opposes H.R. 5088: “America’s Commitment to the Clean Water Act.” The bill could result in a net increase in litigation which would complicate – if not hinder – real estate transactions during one of the worst housing markets in U.S. history.

Sincerely,

A handwritten signature in black ink that reads "Vicki Cox Golder".

Vicki Cox Golder, CRB  
2010 President, National Association of REALTORS®