



July 7, 2008

Congressman Tim Mahoney
1541 Longworth Bldg.
Washington, DC 20515

RE: Clean Water Restoration Act

Dear Congressman Mahoney:

Thank you for taking time to speak with us at the June 18, 2008 American Rivers Lobby Days. We greatly appreciated the opportunity to convey our concerns over national and local issues affecting the protection of our water resources. One such issue is that recent Supreme Court decisions have changed the intent and implementation of the Clean Water Act. This would result to substantial reductions in the protection of wetlands, which are the headwaters to many of our rivers and estuaries. In Florida, it is estimated that approximately half of all our wetlands will not longer be protected under the Clean Water Act as a result of these policy changes. Pursuant to our discussion requesting your support for the Clean Water Restoration Act, we would like to offer the following additional information on this issue for your consideration.

Background on the Clean Water Restoration Act

The Clean Water Restoration Act bills, S1870 sponsored by Senator Feingold and HR 2421 sponsored by Congressman Oberstar, were introduced in 2007. The Clean Water Restoration Act would amend the Federal Water Pollution Control Act (commonly known as the Clean Water Act) to replace the term "navigable waters," throughout the Act, with the term "waters of the United States," defined to mean all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting them, are subject to the legislative power of Congress under the Constitution.¹

The purposes of this Act are as follows:

- (1) To reaffirm the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) to restore and maintain the chemical, physical, and biological integrity of the waters of the United States.
- (2) To clearly define the waters of the United States that are subject to the Federal Water Pollution Control Act (commonly known as the 'Clean Water Act').

¹ Congressional Research Service, Library of Congress

- (3) To provide protection to the waters of the United States to the fullest extent of the legislative authority of Congress under the Constitution.²

It would in essence restore the traditional extent of the Clean Water Act's implementation over natural waterbodies. It would not however, increase the scope of the Clean Water Act to regulate waterbodies not originally protected through the implementation of the Clean Water Act.

Nothing in such Act would affect Clean Water Act exemptions or the authority of the Secretary of the Army or the Administrator of the Environmental Protection Agency (EPA) under the provisions of the Federal Water Pollution Control Act related to discharges: (1) composed entirely of return flows from irrigated agriculture; (2) of stormwater runoff from certain oil, gas, and mining operations composed entirely of flows from precipitation runoff conveyances, which are not contaminated by or in contact with specified materials; or (3) of dredged or fill materials resulting from normal farming, silviculture, and ranching activities or from activities with respect to which a state has an approved program, or for the purposes of maintenance of currently serviceable structures, construction or maintenance of farm or stock ponds, irrigation ditches and maintenance of drainage ditches, or farm, forest, or temporary roads for moving mining equipment in accordance with best management practices, or construction of temporary sedimentation basins on construction sites for which discharges do not include placement of fill material into the waters of the United States. Additionally, nothing in the Act would change the scope of activities regulated in any way from those that have been regulated under the Act since its inception.³

What this Act Means for Florida

According to the Environmental Protection Agency, Florida's total stream mileage was 51,858. Of these, 2,959 are intermittent (seasonal) and 25,909 miles have been severely altered. Not only would these waterbodies be at risk of no longer being protected under the current interpretation of the Clean Water Act, but it is also estimated that over half the wetlands in Florida would lose their Clean Water Act protection as well if the Clean Water Restoration Act does not pass to maintain the intent of the Clean Water Act in protecting these precious water resources.

Florida has already lost more wetlands, 9.3 million acres, than any other state. These wetlands are essential in providing flood attenuation and water storage in a state that receives almost all of its rain in four short months and then almost none for the next eight. Wetlands have the ability to hold up to 1.5 million gallons of water per acre. Not only is the loss of the protection of these wetlands an environmental catastrophe, but a serious threat to the water supply and flood protection for Florida's residents.

Additionally, the alteration and loss of protection for streams and other upstream waterbodies threaten the water quality of our rivers, beaches, and estuaries. Small streams and wetlands make up approximately 85% of the total drainage network in a basin and collect most of the nutrients from the surrounding terrestrial ecosystem. With routine nutrient pollution exceedences of the state water standards, and their associated harmful algal bloom outbreaks and fish kills, it is evident that we cannot afford to lose any more of the natural filtration that these wetlands and small streams provide. Clean water is the basis of our tourism-based economy and quality of life, and without the

² Text of Senate Bill 1870: Clean Water Restoration Act of 2007

³ Congressional Research Service, Library of Congress

Clean Water Restoration Act, Florida's economy and quality of life stand to be diminished to the point of irrevocable harm.

We Need Your Support

We are urging you to support the Clean Water Restoration Act. The Supreme Court did not deny Congress' Constitutional authority to define water of the United States and in fact, said that a statutory statement is needed to clarify and justify protection of such waters.⁴ The Clean Water Restoration Act provides just such a statutory statement, and ensures that the intent as well as the implementation of the Clean Water Act's protections are maintained.


Thank you for your time and consideration of this matter and please feel free to contact Jennifer Hecker at (239) 692-0304 x250 for further information.

Sincerely,


Jennifer Hecker
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⁴ Congressional testimony submitted on Dec. 13, 2007 by Emory University of Law Professor William W. Buzbee