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April 29, 2008

The Honorable James Oberstar, Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

RE: H.R. 2421

Dear Mr. Chairman:

I wish to thank you for the opportunity to present testimony on behalf of municipal members of the National Water Resources Association (NWRA), Western Urban Water Coalition (WUWC), and Western Coalition of Arid States (WESTCAS). As partners with the EPA and the states in ensuring that the goals of the Clean Water Act are continuously met, including through substantial investment in water, wastewater, and stormwater infrastructure, these entities remain dedicated to a strong, yet workable clean water program.

We were pleased to hear that you consider the current version of H.R. 2421 to be “a starting point” in the dialogue over potential amendments to the Act. We would like to provide our assistance in reaching a resolution of the debate over appropriate statutory language which maintains the necessary federal/state balance, respects private property rights, and does not unduly constrain our ability to meet future infrastructure requirements, including those necessary to respond to climate change. Municipalities and their rural neighbors must be in a position to provide reliable and affordable water supplies, while simultaneously protecting and enhancing the waters we all value. To that end, we offer the following observations:

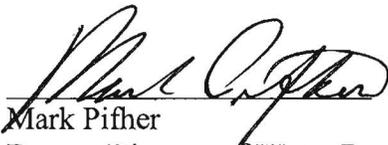
- The bill language should be as brief and precise as possible, hopefully eliminating the confusion and delays associated with good-faith agency efforts to respond to the Rapanos and SWANCC decisions. This includes elimination of the extensive “findings” in H.R. 2421 which, in and of themselves, raise questions of interpretation.
- The long-standing reference in the Act to “navigable” should be retained so as to help avoid both the constitutional and on-the-ground implementation concerns identified by EPA, the Corps of Engineers, and other hearing witnesses if all side-boards to jurisdiction are eliminated.
- The reference to “activities affecting these waters” must be deleted as it raises a host of unanswered questions surrounding its interpretation and threatens to undermine State and local control over land and water use decisions.

- The regulatory exemptions for wastewater treatment systems and prior converted crop land should be maintained and similar exemptions should be noted for infrastructure directly associated with stormwater control, water conveyance and agricultural irrigation practices.
- To the extent there is found to be a need to encompass certain intrastate, isolated, intermittent, ephemeral or otherwise hydrologically disconnected waterbodies under the “federal” umbrella, ensure that the states have a lead role in the identification of such waterbodies and that their case-by-case protection be tied to meeting the underlying goals of the Act.

In conclusion, WUWC, NWRA, and WESTCAS believe that to the extent modifications to the Act are necessary in response to the Rapanos and SWANCC decisions, such amendments should embody the above principles so as to avoid the confusion, federal encroachment and inevitable litigation associated with the currently proposed language. We stand ready to work cooperatively on more specific statutory language as time allows and the legislative process moves forward. In that regard, we would suggest that convening an expert panel representing various stakeholder interests, with an opportunity for further public input, may be a useful approach to closing the gap between the many divergent interests.

I've been requested to represent that Robert Trout, who testified on behalf of agricultural interests at the April 16th hearing, joins in these comments. Thank you for your consideration.

Sincerely,



Mark Pifher
Deputy Director of Water Resources