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LICA Position Paper on the proposed amendments to the Clean Water Act.

Written 31 DEC 2009/jwp, Approved by the LICA Board, 26 FEB 2010

The US House and Senate are both proposing amendments to the Federal Water Pollution Control Act of 1972 (PL 92-500). The House Bill introduced on May 21, 2007, is H.R. 2421 championed by Rep. James Oberstar (D-MN). The Senate Bill introduced on April 2, 2009 is S. 787 championed by Sen. Russ Feingold (D-WI) and others. One of the concerns about these proposed amendments is that they would replace the term "navigable waters" with the term "waters of the United States." This change alone would vastly expand federal control over all the waters of the United States including potholes, playas and irrigation return flows on private property. These proposals:

- Grant EPA and the USACE unlimited regulatory control over all "intrastate" waters.
- Grant EPA and the USACE unrestricted authority to regulate all activities (private or public) that may affect intrastate waters.
- Nullify existing agency regulations without maintaining long-standing and important regulatory exemptions allowing historically commonsense uses.
- Include a citizen lawsuit provision that allows anyone to sue you if they "think" your activity "might" affect water.

Two Supreme Court Decisions have provided some regulatory relief for landowners and local governments, and have had a profound effect on the ever-expanding jurisdictional reach of EPA and the USACE. They are the *Solid Waste Agency of Northern Cook County* (SWANCC) decision in 2001 that said the CWA does not have jurisdiction over isolated wetlands. The *Rapanos* decision in 2006 said that the jurisdiction under the CWA must show a clear connection to a navigable water, the term used in the Act. Some have not liked the reigning in of EPA and the USACE, and want to get back to a point prior to these Supreme Court decisions and in fact expand federal authority and jurisdiction even more. The EPA administrator admits these amendments will expand enforcement.

While **the original CWA** was very broad and extensive, it **was never intended to be unlimited**, and that is what these amendments would make it. At some point, federal jurisdiction must end, and for now that end point by definition is "navigable waters," as imprecise as that may be. And since these amendments would claim federal jurisdiction over all waters of the U.S., it follows that all land management activities that might impact those waters in any way would also be regulated. So, this is not just a water grab, but a land grab as well. The real issue is NOT one of clean water; it is one of jurisdiction and federal control. And federal jurisdiction does not equal protection, just look at the plight of our National Parks and Monuments that have to seek maintenance funds from commercial companies.

Many groups supporting these amendments are the anti's; anti-private property, anti-free market, anti-use, organizations such as Earth Justice, Greenpeace, etc. Those that oppose these amendments tend to be the actual producers in society, the National Cattlemen's Beef Association, Wheat & Corn Growers, National Mining Association and even the National Association of Counties. These amendments would have an adverse impact on LICA construction activities.

These amendments go far beyond the interpretations of jurisdiction advanced by the agencies in the 30 years preceding the SWANCC and Rapanos decisions. The National Center for Public Policy Research says they would do more to threaten the cherished pastimes of outdoor enthusiasts than they would do to ensure the cleanliness of the nation's water. These bills push the limits of federal authority not matched by any other law, with the possible exception of the cap & trade & national health care legislation also being proposed. For these reasons, **LICA opposes H.R. 2421 and S. 787.**