

**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

April 21, 2010

**America's Commitment to Clean Water Act  
Is Good for Farmers**

Dear Friend:

I introduced "America's Commitment to Clean Water Act" to reaffirm the ability of the Clean Water Act to protect the nation's waters, including wetlands. These waters support our nation's economic well-being, enable our quality of life, and sustain our environment for generations to come.

In 1972, Congress set a goal that the nation's waters would be fishable and swimmable by July 1, 1983. Great progress toward that goal has been made, but 40% of our waters still do not meet the goals and standards of the Act.

In 2001 and 2006, two decisions of the U.S. Supreme Court threw the nation's clean water programs into turmoil, creating confusion and uncertainty for communities, developers, and agricultural interests, and placed at risk the nation's ability to restore, protect, and maintain water quality and the water-related environment.

Turmoil, confusion, and uncertainty are no way to run a program. The result has been increased processing times and backlogs as the agencies struggle to interpret the court decisions. That is why I developed legislation to restore the common understanding of the scope of the Clean Water Act based on decades-old interpretations of the U.S. Army Corps of Engineers and the Environmental Protection Agency.

Opponents of the bill argue that it will make every drop of water subject to Federal jurisdiction. Nothing could be more fanciful or untrue. The bill has been carefully crafted to ensure that the Clean Water Act is neither expanded nor contracted. I worked extensively with EPA, the Corps, the Natural Resources Conservation Service, and agriculture and resource conservation groups to achieve that result, being purposefully careful to avoid new terms or concepts that could be misinterpreted.

Certain interest groups have raised concerns about the legislation and how it might affect agriculture's status under the Clean Water Act. Let me address those concerns.

There are over 53 million acres of "prior converted cropland" in the U.S. The bill will codify the regulatory exemption from Clean Water Act permitting for farming on these prior converted croplands. The exemption for prior converted cropland in the bill is drafted using the language in the current

regulations of EPA and the Corps; the bill retains the significant role of the Secretary of Agriculture in determining what constitutes prior converted cropland. The proposed definition of prior converted cropland comes directly from Department of Agriculture regulations, implementing documents, and the statutes of 1985 and 1996.

The current prior converted cropland exemption is regulatory and could be changed or repealed at any time. I believe that placing the exemption in the statute offers greater certainty and clarity to the agricultural community. A farmer will be guaranteed the exemption with enactment of this bill.

Agriculture enjoys other special provisions in the Clean Water Act that recognize the needs of day-to-day farming, irrespective of whether the discharge occurs on prior converted croplands. All of those special provisions are protected, specifically:

Preserving the existing permitting **exemptions** for—

1. Normal farming, silviculture, and ranching activities.
2. Maintaining and making emergency repairs to dikes, dams, levees, groins, riprap, breakwaters, causeways, and transportation structures.
3. Farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches.
4. Construction of temporary sedimentation basins on a construction site.
5. Farm or forest roads, and temporary roads for moving mining equipment.
6. Agricultural stormwater discharges and return flows from irrigated agriculture.

In addition to the permitting exemptions enjoyed by agriculture, the bill also preserves the long-standing policies of Federal agencies to **not regulate discharges** into—

1. Non-tidal drainage and irrigation ditches excavated on dry land.
2. Artificially irrigated areas which would revert to upland if the irrigation ceased.
3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water that are used for purposes such as stock watering, irrigation, settling basins, or rice growing.
4. Reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
5. Water filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel.

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As you can see, a good number of actions taken within the course of farming are currently outside the scope of the Clean Water Act. The bill diminishes none of them.

In addition to preserving the special provisions and practices related to agriculture, the bill also preserves State jurisdiction over the quality of ground water, and preserves States' rights over water quantity. State established water rights remain the province of the States, and the bill does not affect those rights.

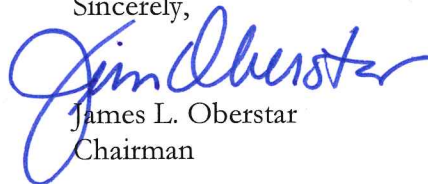
Opponents of the bill argue that the Federal government should not require a permit for everything you do that might affect a wet area. I agree. The Clean Water Act **never required** such permits and I do not offer legislation that would do so.

Simply put, if it was not regulated before 2001, it will not be regulated with the enactment of the bill.

Some people have opposed the Clean Water Act for decades, and it should not come as a surprise that these same groups are using recent Supreme Court decisions as justification to roll back protections under the Clean Water Act. For the sake of future generations, progress must not be rolled back. We must advance the cause of clean water by sustaining the original purpose of the Act.

In 1972, Congress voted ten-to-one to overturn President Nixon's veto of the Clean Water Act and to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Since that time, Americans have overwhelmingly expressed their support for protecting our nation's waters and keeping them safe from polluters. The bill will restore America's commitment to clean water, and preserve the ability of American agriculture to bless this nation with our abundant and affordable food supply.

Sincerely,



James L. Oberstar  
Chairman