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# AAW ACTION REQUEST

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**TO:** AMERICAN AGRI-WOMEN MEMBERS  
**FROM:** AAW  
**SUBJECT:** PROPOSED CHANGES TO FEDERAL CLEAN WATER ACT H.R. 2421/S.1870  
**DATE:** 10/5/2007  
**CONTACT:** CHERYL DAY, AAW WATER RESOURCE MGT. CHAIR, cday@iadd.info

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## ACTION REQUEST

The American Agri-Women is asking all members to contact their U.S. Congressmen. Please contact your legislators and let them know how this fundamental change to the Federal Clean Water Act would personally effect your farming operation.

## BACKGROUND INFORMATION

US Representative James Oberstar (MN) and Senator Russell Feingold (WI) propose to amend the Clean Water Act of 1972, HR 2421/S. 1870, by changing the definition of “navigable waters” and further define it to mean “the waters of the United States”. This minor word change would drastically expand the federal Clean Water Act (CWA) jurisdiction to virtually all wet areas in the United States. This change would have great consequences to agriculture and would create a bureaucratic problem to administer. As a result, landowners would need a permit for routine farming practices (such as tiling a field regardless if it is adjacent to wetland or not).

Eliminating ‘navigable’ from the statute and replacing it with previously proposed definitions will significantly expand the reach of the CWA by premising its jurisdiction on “the legislative power of Congress under the Constitution.” In reality, such a premise would serve only to significantly broaden the jurisdiction of the CWA in a fashion even more ambiguous than current regulations. If proposals such as this were to become law, the only way to answer whether a “water” is subject to CWA’s jurisdiction would be thorough costly and time consuming litigation.

Inevitably, such litigation would involve not just the scope of the CWA but the scope of Congress’ Constitutional authority, because that is the only limit such proposals clearly acknowledge (but do not define).

## CONTACT INFORMATION

A vote could occur as early as this fall. Please contact your U.S. Congressmen, Bill Sponsors, and key Committee Members.

H.R. 2421: Currently, the bill is in the House Subcommittee on Water Resources and Environment. Sponsor: James Oberstar (D-MN) Co-Sponsors: 169.

Click on this Link to track this legislation and view bill sponsors:  
<http://thomas.loc.gov/cgi-bin/query/z?c110:H.R.2421>

House Water Resources and Environment Subcommittee Link:  
<http://transportation.house.gov/water/index.shtml>

S.1870: Currently, the bill is the U.S. Senate Committee on Environment and Public Works. Sponsor: Senator Feingold 20 Co-Sponsors:

Click on this Link to track this legislation and view bill sponsors:  
<http://thomas.loc.gov/cgi-bin/query/z?c110:S.1870>

Senate Environment and Public Works Committee link: <http://epw.senate.gov/public/>

## AAW POSITION STATEMENT

Oppose H.R. 2421/ S. 1870

## DETAILED INFORMATION

***H.R. 2421/S. 1870 would<sup>1</sup>:***

- Grant EPA and the U.S. Army Corps of Engineers virtually unlimited regulatory control over all “intrastate waters” – essentially wet areas within a state including groundwater, ditches, pipes, streets, gutters, and desert features.
- Grant EPA and the Corps unrestricted authority to regulate all activities (private and public) that affect waters, regardless of whether the activity is occurring in water or may impact water at all.
- Eliminates the existing regulatory limitations authorized by both Democratic and Republican administrations allowing common sense uses, such as prior converted cropland and waste treatment systems.
- Fail to clarify any limits on federal authority.

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<sup>1</sup> Information provided by the Waters Advocacy Coalition.

## CONCERNS

- EPA and the Corps of Engineers will exercise unlimited regulatory authority over all intrastate waters, including, for example, waters now considered entirely under state jurisdiction.
- Enormous resources will be needed to expand and defend the federal regulatory program, exacerbating an existing CWA funding gap and leading to longer permitting delays.
- Increased delays in securing permits will impede a host of economic activities commercial -- and residential real estate development, agriculture, electric transmission, transportation, mining will all be affected. Based upon agriculture organizations' accounts of members' experiences, it takes on average between 2-3 years to obtain an individual permit. The current backlog for individual permits is estimated between 15,000 and 30,000.
- An expanded federal water program would impose an unfunded mandate on States by increasing the number of waters subject to water quality standards, the setting of Total Maximum Daily Loads (TMDLs), and expanding the permitting workload under various aspects of the state-administered programs.
- Expanded federal jurisdiction would pre-empt state and local governments from making local land and water use decisions and alter balance of federal and state authority established when the Clean Water Act was first enacted and reaffirmed during subsequent reauthorizations.
- Litigation will increase as the government and stakeholders struggle to clarify the uncertain scope of constitutional authority.

***In sum, the proposed legislation does not “codify” existing regulations or “restore” the CWA to its original scope. Indeed, far from clarifying the jurisdiction limits of the CWA, the proposed language creates greater ambiguity. Should this legislation become law, the only certainty will be the ensuing litigation to have the courts determine Congress’s scope of Constitutional authority.***

## ACTION DETAIL

1. Do your Homework: Read the summary sheets to learn more.
2. Know your Opponent: Learn what the supporters of the bills are saying:  
Clean Water Action [www.cleanwateraction.org](http://www.cleanwateraction.org);  
Sierra Club <http://www.sierraclub.org/legislativetracker/109S912.asp>
3. Utilize the fact sheets and background information to write your legislator. Affiliate legislative teams should compose a sample letter for members to use. It is always recommended to use your own words and style.
4. Call your U.S. Congressman office. Do not be surprised if you are referred to a staff person or to leave your comments in a message form. Please remember legislators are very busy. They rely heavily on key staff personal to do the research. Sometimes an appointment or conversation with a staff person can be just as effective. Always thank your legislator and/or staff for his or her time.
5. Write a letter to the editor of your local paper.
6. Organize a petition campaign.
7. Team up with other associations and organize a public hearing inviting US Representatives and Senators to attend.

8. Talk to your friends, neighbors, and other members of your community and spread the word!

Do not assume that your legislator (s) has been contacted. More contacts the better. Please make the personal contact or join forces when applicable with other agriculture leaders.

## **SAMPLE LETTER**

*Letter provided by the American Property Coalition. It is important to use this letter as a guide and add your own words.*

### **Letter to Congressional Representatives:**

The Honorable  
U.S. House of Representative or U.S. Senator  
Address  
State or Washington, D.C.

Dear Congressman:

I am writing to express deep concern about an effort by Congressman James Oberstar and Senator Russ Feingold to introduce legislation, which will amend the Clean Water Act. The proposed amendment will make it difficult, if not impossible to develop or improve property, grow crops, site businesses, build roads and trails, provide water to cities, operate and maintain water storage and delivery facilities and perform routine agricultural activities. The economic havoc will be huge.

Our country has made great strides in cleaning our nation's waterways since the CWA was first enacted in 1972. While it is possible to improve a successful program, as the CWA is, the proposal by Congressman Oberstar is overbroad and unnecessary. Especially problematic is that the legislation seeks to extend government regulation to all "activities affecting these waters". Such language does not exist in current law and is extremely broad and ambiguous. This language would allow the federal government to control all activities that "affect" all waters regardless of whether the activity is occurring in water at all.

Please do not sign on to co-sponsor this legislation. Additionally, do not support it. Encourage your colleagues to oppose this legislation. It is not needed, and it is an extreme approach which will produce only negative consequences.

Thank you for your consideration of these serious concerns. Your support is deeply appreciated.

## REFERENCE WEBSITES:

American Property Coalition: <http://www.americanpropertycoalition.org>

American Farm Bureau: <http://www.fb.org/index.php?fuseaction=legislative.cleanwateract>

National Association of Counties:

[http://www.naco.org/Template.cfm?Section=environment\\_energy\\_and\\_land\\_use&template=/ContentManagement/ContentDisplay.cfm&ContentID=22939](http://www.naco.org/Template.cfm?Section=environment_energy_and_land_use&template=/ContentManagement/ContentDisplay.cfm&ContentID=22939)

National Corn Growers: <http://capwiz.com/ncga/issues/bills/> (link to sponsors and co-sponsors contact information)

Croplife America Written Testimony:

[http://www.croplifeamerica.org/design\\_06/viewer.asp?pageid=212](http://www.croplifeamerica.org/design_06/viewer.asp?pageid=212)

## FEEDBACK

Any feedback that you received from a personal contact will assist us in this action.  
Thank You!

## QUESTIONS

If anyone has question about this Action Request please contact Cheryl Day 217-763-6300 or [cday@iadd.info](mailto:cday@iadd.info)