

Texas Wildlife Association

"Working for tomorrow's wildlife ... TODAY!"

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June 17, 2009

Honorable John Cornyn
517 Hart Senate Office Bldg.
Washington, DC 20510

Honorable Kay Bailey Hutchison
284 Russell Senate Office Building
Washington, DC 20510

Attn: Clean Water Act – Removal of “Navigable Waters”

Dear Senators Cornyn and Hutchison:

The Texas Wildlife Association (TWA) and its members are landowners, land managers, hunters and conservationists who care for and control nearly 40 million acres of private land in Texas. We are writing to express our concern over pending legislation that proposes a huge expansion of the jurisdiction in the Clean Water Act in S.R. 787, the Clean Water Restoration Act of 2009. Removing the word “navigable” from the definition of federal waters will make all waters subject to federal law and regulation, resulting in an obvious intrusion on states’ rights and individual property rights. This proposed expansion would effectively cover all wet areas and ephemeral puddles within the United States, assuring a landowner backlash and impacting rural and urban communities. This attempt to create regulations affecting these waters is so broad that federal agencies would lack significant direction, and any activities involving water could be subject to litigation. The bill does not mention or retain existing permitting exemptions for agriculture, ranching, wildlife management or forestry, and it likely subjects these landowner-based activities to extensive new permitting and regulatory requirements.

TWA is a long-time supporter of pragmatic and intelligent wetlands management and conservation to enhance wetland wildlife and habitat. However, we strongly believe the removal of “navigable” overreaches the bounds of federal authority and treads on states’ rights and that the proposed act will negatively impact on-going positive and well-received incentive programs and NGO, state and federal efforts in wetlands conservation.

Critically, the Congress must be careful during the mark-up and amendment process to ensure the regulatory and enforcement issues of the late 1990’s related to confusion over definitions of wetlands (pre-SWANCC decision) are clarified and addressed rather than just summarily reimposed. The USDA Natural Resource Conservation Service should not be designated as the “wetlands police,” a role that is contradictory to its primary purpose of technical assistance to landowners. The Senate must not just transfer the questions and concerns now faced by government agencies to the individual private landowners and replace agency uncertainty based on court decisions with overly burdensome government regulations impacting the landowner community.

Thank you for the opportunity to comment, and we sincerely hope that you will seriously consider and pass on our comments and concerns to your peers during initial deliberations in the Senate Environment and Public Works Committee on June 18.

Sincerely,

Kirby Brown
TWA Vice President of Public Policy