

**Association of Fish & Wildlife Agencies
Association of State and Interstate Water
Association of State Floodplain Managers
Association of State Wetland Managers
Coastal States Organization
Environmental Council of the States**

April 23, 2009

The Honorable James L. Oberstar
2365 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

The Honorable John Mica
2313 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Congressman Oberstar and Congressman Mica:

For 30 years the Clean Water Act has served as the basis for clean-up and protection of the nation's lakes, rivers, coastlines and wetlands. Today, implementation of the Act, a successful and widely accepted program, has become mired due to questions of interpretation on program authority.

Last year state organizations wrote to Congress about the need to pass legislation to address Clean Water Act jurisdiction issues. While hearings and substantial debate before Congress occurred, there was no broad consensus reached to enable passage of legislation to solve the problems identified. The number of state organizations urging a legislative remedy has since increased as concerns continue to emerge and grow. These include uncertainty over the scope of jurisdiction, delays in decision-making and concern over potential threats to human health and the quality of the nation's waters.

This year the States are recommending an approach that we hope will assist Congress in resolving this matter. It is a two-part process built on restoring the definition of "waters of the United States" used in regulation prior to the court cases (SWANCC and Carabell/Rapanos) plus changes designed to allow for more straightforward transfer of Section 404 implementation to willing States.

We believe that adopting EPA's regulatory definition of waters into statute to clarify the definition of "waters of the United States" will achieve a definitive return to the Act as it was without increasing or reducing the scope of its jurisdiction. The exemptions for agriculture, silviculture and other activities would remain in place. Further, we believe that the use of the previous regulatory definition neither broadens or lessens federal authority, nor causes a loss of states' rights. To emphasize this, we ask that the findings and/or report language include a statement that asserts that "ground waters" and certain manmade artificial waters are not included in the jurisdiction of the Act. To reduce the potential for future jurisdictional uncertainty we encourage Congress to explicitly ground

its authority to enact the Clean Water Act by asserting appropriate Constitutional authorities in addition to the Commerce Clause.

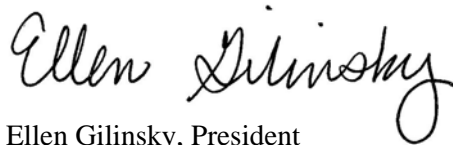
Second, we strongly encourage Congress and the Administration to work together to make State Assumption of Section 404 a viable option, as it is for other sections of the Act. Under the Act, States may seek to implement the section of the Clean Water Act (Section 404) that governs dredge and fill activities in wetlands and other waters. However, a complex delegation process is in place and the existing wetland grant funding for States cannot be used to implement this program. These are the two main reasons why only two States have opted to assume authority in this area. There are a series of relatively simple steps that can be taken to streamline this process that include and encourage state assumption: 1) a new authority that authorizes US EPA to provide states with grants to implement wetlands protection programs, and 2) a process that allows states to take partial delegation or to take over the program gradually by activity and/or geographic location. In addition, states should be allowed to implement functionally equivalent wetlands protection programs (a program that achieves equal or better results but which uses processes that do not have to exactly mirror the current ones used at the federal level).

We are happy to discuss these approaches in more detail with you. We believe this two-part approach is truly a win-win scenario, and we respectfully hope you will consider and enact it.

Sincerely,



R. Steven Brown, Executive Director
The Environmental Council of
Water the State (ECOS)



Ellen Gilinsky, President
Association of State and Interstate
Pollution Control Administrators
(ASIWPCA)



Matt Hogan, Executive Director
The Association of Fish & Wildlife Agencies
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Jeanne Christie, Executive Director
Association of State Wetland Managers
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Kristen Fletcher, Executive Director
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Larry Larson, Executive Director
Association of State Floodplain
Managers (ASFPM)

For information on resolutions of the organizations, go to their web site:

ECOS www.ecos.org

AF&WA www.fishwildlife.org

CSO www.coastalstates.org

ASIWPCA www.asiwpc.org

ASWM www.aswm.org

ASFPM www.floods.org

CC: Speaker Nancy Pelosi
Members, Transportation and Infrastructure Committee