



June 2, 2009

The Honorable Michael Bennet
United States Senate
702 Hart SOB
Washington, D.C. 20510

Dear Senator Bennet,

On behalf of the undersigned organizations, which represent business interests across the state, we respectfully request your opposition to S.787, the Clean Water Restoration Act, by Senator Feingold. This legislation re-defines “waters of the United States” by deleting the word “navigable” from the definition and grants unprecedented and far reaching authority to the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps). We are strongly opposed to this change.

S.787 would apply the broadest possible interpretation of the Clean Water Act (CWA), subject only to constitutional limits and removes any argument that Congress intended any limit on the regulatory reach of the act. Truly navigable waterways, streams with permanent flow and streams with seasonal flow, are already subject to CWA regulation under current law. Senator Feingold’s bill would extend jurisdiction to areas where the hydrologic connection may be too insubstantial for any linkage to be established with navigable waters.

While on its face the legislation seems innocuous, removing the term “navigable” from the Clean Water Act would grant federal jurisdiction over all waters including wetlands, intermittent streams, mudflats, sloughs, prairie potholes, wet meadows, playa lakes, stock ponds, groundwater, ditches, pipes, streets, gutters, wet farmland drain tiles, treatment ponds, lagoons and other places water may flow or stand regardless of size or proximity to traditionally “navigable” waters. S.787 will fundamentally erode the ability of our state to manage our own water resources and lead to new unfunded mandates on state and local governments.

Currently CWA jurisdiction is limited to the confines of Congressional authority to regulate commerce under the Commerce Clause of the U.S. Constitution. The proposed amendments would change that to “all waters.....subject to the legislative power of Congress under the Constitution.” The reach of this expansion of power would be virtually unlimited.

The legislation also regulates waters identified in the definition “to the fullest extent that these waters, *or activities affecting these waters*, are subject to the legislative power of Congress under the Constitution.” The language, “*activities affecting these waters*,” is extremely ambiguous. Under the bill, regardless of whether an activity is occurring in a water, the fact that the activity may impact a water would allow the activity to be regulated under the CWA.

Further, this broad expansion of the CWA's jurisdiction would thrust unfunded mandates on state and local governments and could impact land use plans, floodplain regulations, building and/or special codes, watershed and storm water plans, etc. Local governments are also responsible for a number of public infrastructure projects that will be impacted by proposed changes, including water supply, solid waste disposal, road and drainage channel maintenance, storm water detention, mosquito control and construction projects. Local government's efforts to carry out maintenance of government-owned buildings (hospitals, schools, municipal offices, etc.) could also be impacted. This could expose a whole range of activities to permit requirements under a regulatory system that is already overwhelmed. Today, it takes on average between two and three years to obtain individual permits under CWA. The costs and delays associated with securing such permits will impede a host of economic activities including: commercial and residential real estate development; agriculture; electric transmission; and transportation, among others.

Because Colorado possesses National Pollutant Discharge Elimination System (NPDES) permitting authority, the Colorado Department of Public Health and Environment would also be required to issue many new NPDES permits for any point source discharges to the expanded inventory of "waters" and potentially devise regulatory programs for "activities affecting these waters." The consequences on the state's non-point source control programs are difficult to determine but could be dramatic as well. Unfortunately, S.787 does not address these increased requirements on state and local governments or how to pay for them. Further, the State of Colorado today regulates water beyond those subject to CWA jurisdiction. Waters of the State, non-navigable, intrastate waters, including ephemeral streams and groundwater are subject to standards established by our own State's Water Quality Control Commission.

Finally, the broad and sweeping authority this legislation would grant the EPA and the Corps would have significant negative impacts on many industries in Colorado. We are strongly opposed to S.787 or any similar legislation. We respectfully ask you oppose this measure.

Sincerely,

Action 22
Club 20
Colorado Aquaculture Association
Colorado Association of Commerce
and Industry
Colorado Association of Conservation
Districts
Colorado Association of Realtors
Colorado Cattlemen's Association
Colorado Competitive Council
Colorado Corn Growers Association
Colorado Dairy Producers
Colorado Egg Producers
Colorado Farm Bureau Federation
Colorado Livestock Association
Colorado Mining Association
Colorado Pork Producers Council

Colorado Potato Growers
Colorado Stone, Sand and Gravel
Association
Colorado Wool Growers
International Council of Shopping
Centers, Colorado Government
Relations Committee
NAIOP-Commercial Real Estate
Development Association-Colorado
Chapter
Northern Colorado Legislative
Alliance
Progressive 15
Southeast Business Partnership
Tri-State Generation & Transmission
Western Business Roundtable