

VIA FACSIMILE
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September 27, 2007

The Honorable James Oberstar
Chairman
House Committee on Transportation and Infrastructure
2167 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter from Sept. 6, following up on a meeting you had with Kevin Paap, President of Minnesota Farm Bureau Federation, and Don Parrish of the American Farm Bureau Federation (AFBF) public policy staff in which you discussed H.R. 2421 and the legislation's impact on agriculture. We are grateful for your willingness to listen to our concerns about this proposal.

By the very nature of our business, farmers and ranchers have a vital stake in respecting and protecting our nation's waters and streams, both for ourselves and for future generations. We are proud of our record. We have a strong history of working to see that our waters are protected while American agriculture remains a leader in feeding the world. We take second place to no one in our commitment to the land and the water where we raise our crops, tend our livestock and rear our children. I know I speak for the millions of farmers and ranchers in Farm Bureau when I say that we will work with you and all members of the committee in crafting a legislative approach to the Clean Water Act that reaffirms the original provisions of the law.

Upon receiving your correspondence, I made every effort to determine the status of any commitment made with respect to legislative language. It is my understanding that, to date, there is no common understanding on exactly what H.R. 2421 would do; that fact presents a fundamental obstacle in developing the kind of language referred to in your letter. The heart of the question is whether the language of H.R. 2421 merely restates (or "restores," in the parlance of the bill) what Congress did in 1972 or whether – as most are convinced – it goes substantially beyond it. If the goal is to assure that the act as passed in 1972 is not weakened, I am confident all interested parties could work together in a cooperative, constructive way. If, on the other hand, the purpose is to bootstrap into the law new requirements that were never envisioned in 1972, that presents an entirely different set of difficulties. (A further discussion of some of these issues is contained below.) In any event, our commitment to continuing the dialogue with you and your staff on this important topic is firm and unwavering, with the goal of finding common ground on which we can proceed.

Beyond this significant instance, it is unfortunate that other misunderstandings have arisen. I have heard in several instances from people who have said that Farm Bureau

was invited by the committee to testify at a hearing earlier this year yet declined to do so. There is no evidence whatsoever in our files that Farm Bureau was extended an invitation by the committee, nor does anyone in this office have any recollection of having been extended an invitation orally by staff. I understand that Minnesota Farm Bureau has already clarified this with your office, but it is regrettable that this misperception has occurred.

Such misunderstandings should not impede our efforts to find a legislative solution that will meet with broad, bipartisan support. In a debate such as this, which has generated significant discussion, such instances of misunderstanding are no reflection of the good faith shown and respected on either side. They certainly affect in no way our respect for you as chairman of the committee, nor do they attenuate our desire to continue working with you and your staff on this issue.

In your letter, you ask for “specific legislative recommendations to H.R. 2421.” I am listing below three issues that are fundamental to Farm Bureau’s concerns with respect to H.R. 2421. These topics have been raised in meetings with you and your staff and I would like to touch on them briefly because I believe they go to the heart of the matter at hand:

- ***Navigable Waters:*** H.R. 2421 deletes the term "navigable waters" from the Clean Water Act (CWA). It is our view, and that of many legal experts, that deleting this term from the 1972 Act will fundamentally expand, not simply restore, the law’s jurisdiction. The purpose of the deletion, as we understand it, is to sever any connection of Federal jurisdiction over U.S. waters from the commerce clause under the Constitution. Whether some intended to do that in 1972 may be open to debate; whether Congress did so is not. The history of regulatory development of the act since 1972 amply demonstrates that the commerce clause was and is at the root of the federal government’s regulatory jurisdiction. We believe it should remain.

If our reading of the intent of this provision is at variance with your own, please let us know.

- ***Prior Converted Croplands and waste treatment ponds:*** By its nature, H.R. 2421 would require a new rulemaking to implement the new statutory definition it would insert into the act. No one disputes the fact that new rulemaking would be required. The bill thus would set into motion the normal procedures under the Administrative Procedures Act (APA); as a consequence, every existing regulatory provision would be open to reconsideration, re-proposal and, for those who disagreed with the outcome, litigation. There is nothing in the legislation that would ensure continuance of (or “restore”) the current regulatory safeguards as they exist today. In fact, many believe just the opposite: that H.R. 2421 would eliminate the agencies’ ability to continue the common sense regulatory exemptions for prior converted cropland and waste treatment systems. To suggest that the protection of prior converted croplands and waste treatment systems

would not be affected by the text of H.R. 2421 is a fundamental misreading of the bill. To our knowledge, no one conversant with the law disagrees with this conclusion, but if you disagree with this reading, we would value your interpretation.

- ***“activities affecting these waters”***. This language has no precedent in the 1972 act, subsequent amendments or existing regulation. It opens a door to federal regulators that is literally unprecedented in the law, opening up jurisdiction not just to “waters” but to dry land, such as ditches or farm drainage features. No objective reading of the provision can lead to any conclusion other than it will impose burdens far beyond those envisioned in the original law.

I want to thank you for the courtesy and cooperation you have demonstrated throughout the committee’s consideration of this difficult issue. I look forward to working with you on a proposal that can achieve broad, bipartisan support.

Sincerely,

Bob Stallman
President