

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

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June 17, 2009

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable James Inhofe  
Ranking Member  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer and Ranking Member Inhofe:

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, applauds the Committee for seeking compromise on S. 787, the "Clean Water Restoration Act." However, although progress has been made, the Chamber cannot support the bill as currently drafted. The Chamber recognizes the Committee's need to provide regulatory certainty to agencies and businesses currently grappling over the jurisdiction of the Clean Water Act (CWA), but as drafted, S. 787 has the potential to create a great deal of *uncertainty* for construction, agriculture, and other sectors of the American economy, and in some cases even projects funded by the 2009 economic stimulus legislation.

It has been well-documented that deletion of the term "navigable" from the definition of "waters of the United States" could lead to the unnecessary expansion of the CWA to certain intrastate waters. The bill does attempt to address this problem by listing the specific types of waters explicitly covered by the CWA and exempting others. However, the Chamber's primary concern is that, despite the good intentions of the Committee in negotiating a compromise, S. 787 as drafted is still subject to manipulation by activist groups whose only goal is to stop development.

The Chamber recently launched *Project No Project* (<http://www.projectnoproject.com>), an interactive website that provides details on the 300-plus fossil and renewable energy projects stalled or stopped by "Not In My Back Yard" tactics, such as rezoning, permit abuse, and litigation. As the *Project No Project* site demonstrates, permits are often the single biggest stumbling block to new energy and infrastructure development. And many of the environmental groups calling for enactment of S. 787 are the same groups using NIMBY tactics to oppose energy projects highlighted on *Project No Project*.

If these groups are given yet another tool for their NIMBY toolbelts, the result for development could be disastrous. Take, for example, road maintenance projects. The Chamber expects that groups opposed to a road project could use S. 787 to force developers to subject

themselves to the CWA permit process for the construction and maintenance of roadside drainage ditches. The definition of “waters of the United States” in S. 787 specifically includes “all tributaries of any of the above waters.” Because roadside drainage ditches generally carry water downstream to waterbodies named in the bill, the ditches would be considered tributaries. An activist group could use S. 787 to require CWA compliance for the creation and maintenance of roadside ditches, requiring permits and forcing states to adopt and enforce water quality standards for the water flowing through those ditches.

Surely the Committee could not want to expand the CWA to require that the water in roadside drainage ditches across America be clean enough to drink, nor does it want to stop construction of roads, for which \$27.5 billion has been devoted in the 2009 economic stimulus legislation. But these are the types of problems caused by the existing language contained in S. 787.

The Chamber is unable to support S. 787 in its current form. The Chamber instead urges the Committee to maintain the distinction between federal and state waters by retaining the term “navigable waters” in the CWA. The Chamber’s members share the Committee’s goal of providing regulatory certainty, but S. 787 should clarify jurisdiction without unnecessarily expanding it. The Chamber looks forward to working with the Committee to address the issues raised in this letter and is ready and willing to discuss these issues with you in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most prominent parts.

R. Bruce Josten

Cc: The Members of the Committee on Environment and Public Works